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CANADIAN BANKING PRACTICE

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PUBLISHED BY
F. WILSON-SMITH
MONTREAL

FOURTH EDITION
Enlarged and Revised.

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Canadian Banking Practice

INTRODUCTION TO THE FIRST EDITION.

In 1895, the Editing Committee of the Journal of the Canadian Bankers' Association consisted of Mr. J. H. Plummer, then Assistant General Manager of the Canadian Bank of Commerce, Mr. J. Henderson, Assistant General Manager of the Bank of Toronto, and Mr. E. Hay, Assistant General Manager of the Imperial Bank of Canada, and to these gentlemen, and to Mr. V. C. Brown, who for many years acted as Editor of the Journal, its readers are indebted for a fund of useful knowledge, which the presentation of in book form will, it is hoped, serve to perpetuate and make easy of acquisition. The hundreds of questions received deal with nearly every possible point of practical interest likely to present itself during the daily routine of a bank. The replies given by the gentlemen named, and by their successors in office, to the questions asked of them, necessitated a thorough knowledge of banking custom and usage, and of the general principles of the law as it appertains to acceptances, cheques, deposit receipts, endorsements, letters of credit, circular notes, warehouse receipts, partnership accounts, powers of attorney, bankers' lien, forgery, negotiable instruments, bills of exchange, promissory notes, surety, etc. In instances where legal points were involved the advice of counsel was sought (the legal adviser until recently being Mr. Z. A. Lash, K.C.).

"Canadian Banking Practice," as a work of reference, undoubtedly affords information upon almost every conceivable point likely to arise in the course of dealings between banks and their customers, and in addition to the knowledge of usage and custom likely to be acquired by the student of its pages, he will be given an appreciation of the general principles of the law governing banking and commercial transactions.

JOHN T. P. KNIGHT.

Canadian Banking Practice

PREFACE TO THE FOURTH EDITION
1921

In the present edition many new questions appear and the old answers have been thoroughly revised to conform with recent legislation and jurisprudence. Questions no longer of general interest have been omitted, and all references to the Bills of Exchange Act and to the Bank Act have been verified and brought up to date.

The work has been edited, re-arranged and indexed by Mr. Albert Swindlehurst of the Quebec Bar. In the revision of questions presenting legal problems he has been assisted by Mr. John D. Falconbridge, of the Ontario Bar, author of "Banking and Bills of Exchange."

Canadian Banking Practice

INTRODUCTION TO FOURTH EDITION.

By Mr. Jas. B. Forgan, Chairman, Board of Directors, First National Bank of Chicago.

In the daily course of banking business, while much is mere routine, every one of experience knows that questions are constantly arising which necessitate an appeal to authority for guidance in the novel circumstances presented. The man who can meet such occasions and act with sense and discretion is the man who is likely to rise in his profession. In the present work Canadian bankers have a book of ready reference containing some six hundred answers to such questions by a committee eminently fitted to give authoritative advice.

There is, of course, considerable difference between Canada and the United States, both in regard to the law and the practice of banking, but general principles are the same in both countries, and I cordially recommend a study of this book to the members of the American Institute of Bank Clerks and all others who are seeking to prepare themselves for higher and more responsible positions in the banking world.

(Signed) JAS. B. FORGAN.

Canadian Banking Practice

CHEQUES IRREGULAR IN FORM.

1. One of the questions most frequently submitted to the Questions and Answers Department is as to whether a particular document in the form of a cheque, but which contains some variation, either by way of omission or addition, of the ordinary cheque form, should be regarded as a cheque and either negotiated or paid.

Sir John Paget, in one of his lectures in London before members of the Institute of Bankers, in discussing the *London Joint Stock Bank* v. *Macmillan Case* (see Volume 25 of the Journal (1918), page 313), called attention to what Lord Haldane, one of the Law Lords, said in the *Macmillan Case* in regard to these so-called cheques.

Lord Haldane said: "The customer contracts reciprocally that in drawing his cheques he will draw them in such a form as will enable the banker to fulfil his obligations, and therefore in a form which is clear and free from ambiguity."

Sir John Paget's comment on this language will be of comfort to perplexed bank officers. He goes on to say:

"Let me diverge here for a moment to draw your attention to the bearing of these words on another important point. I have often, both here and elsewhere, given it as my opinion that a banker is not bound to pay any cheque which is irregular or ambiguous in form, unless he has expressly or impliedly undertaken to do so. When specimens of abnormal, perplexing forms of cheques have been submitted to me, and I have been asked what the banker should do, I have said you are not bound to take any risks. It is part of the bargain that the customer should draw his cheques properly and if he does not keep his part, you are not bound to keep yours, and I should return them with a harmless answer, such as 'Cheque irregular, requires confirmation.'

"I do not know that up to now I have had any direct authority to support this view, and I am, therefore, glad to have it confirmed by Lord Haldane, who, in another part of his judgment, repeats the statement in somewhat different terms: 'For as I observed before,' he says, 'the banker, as a mandatory, has a right to insist on having his mandate in a form which does not leave room for misgiving as to what he is called upon to do.' Lord Shaw lays down much the same rule with regard to a cheque which suggests having been tampered with.

"I would note, in passing, that two of the learned Law Lords suggest that in such circumstances the banker's answer should be 'Refer to drawer.'"

PROMISSORY NOTE ON LIEN NOTE FORM.

Question 2.—An accommodation note is offered for discount drawn on a lien note form. Is this valid? If so is it necessary to affix a stamp?

Answer.—It is taken that the document is intended to be an ordinary promissory note, but is drawn on a lien note form and no chattel is involved in the transaction. It is probably a valid promissory note, and, if so, requires a stamp, but a note in such form leaves the way open, at least, to dispute, and it would be safer to require that a regular promissory note be substituted for it.

LIEN NOTE NOT A NEGOTIABLE INSTRUMENT.

Question 3.—Is the following sample a lien note and not negotiable? Due .... $ ....1918.

........days after date .... promise to pay to the order of John Smith, at his office, Vancouver, B.C., the sum of .... dollars, with interest at 8 per cent. per annum, before and after maturity, until fully paid. It is mutually agreed the right and title to ownership in the articles for which this note is given shall remain absolutely in John Smith until this note or any renewal thereof is fully paid. Given for two Motor Trucks No. .

Witness.......... Signed........

Answer.—A note in the form given is not negotiable; the added clause has been held to make the promise conditional.

UNREGISTERED LIEN NOTE IN THE NORTH-WEST TERRITORIES.

Question 4.—Is a lien note made in the North-West Territories negotiable as a promissory note when not registered? i.e., can a holder for value sue a previous endorser in his own name? Does the omission to register deprive the payee of the note of his lien on the chattels?

Answer.—The ordinary lien note is not a promissory note within the meaning of the Bills of Exchange Act and is not negotiable in the usual sense of the word; registration does not affect the matter one way or the other. The person who acquires such a note has therefore no remedy against the endorsers such as the Act provides in regard to bills of exchange.

The non-registration of the note does not, as we understand the matter, deprive the payee of his lien, but it leaves the goods open to be claimed by a subsequent mortgagee or purchaser. This would however depend upon the wording of the statute requiring registration.

NOTE EMBODYING A CONTRACT.

Question 5.—Is the following a legal form of promissory note?

$3,000. Montreal, 31st October, 1899.

On demand for value received, I promise to pay to J. Richardson or order at the Merchants Bank of Canada here, three thousand dollars and interest at the rate of 6 per cent. per annum, having deposited with this obligation as collateral security 5,000 shares Payne Consolidated Mining Co., with authority to sell the same without notice, either at public or private sale, or otherwise, at the option of the holder or holders hereof on the non-performance of this promise, (he or they giving me credit for any balance of the net proceeds of such sale remaining, after paying all sums due from me to the said holders or holder, or to his or their order, and it is further agreed that the holder or holders hereof may purchase at said sale). (Sgd.) A. McKay.

Answer.—It is of course quite lawful for the parties to make such a contract, but we understand the question is as to whether it is a note to which the Bills of Exchange Act would apply, and on this point we are of the opinion that it is not, for the reason that in addition to the inclusion of "a pledge of collateral security with authority to sell or dispose thereof," which are permitted by the Act (section 176, sub-sec. 3), it contains other provisions, notably an assignment of the proceeds as security for other sums due to the holders of the note. There are other conditions in the form which might have the same effect, but the one specially mentioned clearly has.

CHEQUE WITH VOUCHER DETACHED.

Question 6.—A "voucher-cheque" bears the clause "This cheque is not negotiable if detached from voucher." As a cheque is an unconditional order to pay out funds, can a banker legally refuse payment of a "voucher-cheque" from which the voucher has been detached?

Answer.—The bank can legally refuse payment of a "voucher-cheque" from which the voucher has been detached. The ordinary "voucher-cheque" which is made payable *conditionally* on a specified attached receipt being signed by the payee is not a cheque and, therefore, not an unconditional order addressed to the bank on which it is drawn. Such items are debarred from being included in the general law as to cheques. In paying these "voucher-cheques" the bank is not protected by any of the legislation directly affecting cheques. If the receipt is not signed by the payee the banker has paid out his customer's money without authority and cannot debit him. See *Capital & Counties Bank* v. *Gordon,* 1903, A. C. 252. *Halsbury, Laws of England,* Vol. 1, p. 613.

CONDITIONAL ORDER. NOT NEGOTIABLE.

Question 7.—(1) Is a document in the following form a negotiable instrument?

> "Upon being endorsed by the secretary or president of the M — Agricultural Society this order shall be good to the bearer for three dollars, which is given as a special prize to be awarded at their annual exhibition, Fall of 1901."
>
> (Signed) A.B.

(2) If specially endorsed to C.D., is it then payable to bearer or to the order of C.D.?

Answer.—(1) We think that the terms in which the promise to pay is expressed are consistent with the requirements of a promissory note; but the provision that it must be endorsed by an officer of the Society before being good to the bearer makes it conditional. It is therefore not a promissory note and not negotiable in the proper sense.

(2) The effect of an endorsement on an instrument of this kind is, of course, not governed by the Bills of Exchange Act, and any party handling it would have to take the chances of the endorsement proving a sufficient assignment.

CHEQUE MARKED BY THE DRAWER "NOT NEGOTIABLE" MAY BE TRANSFERRED.

Question 8.—Bank A clears to Bank B a cheque in favor of Jones or order (and endorsed by him) drawn on a branch of Bank B at a distant point. Across the face of the cheque is written "not negotiable" by the drawer. For this reason the branch upon which the cheque is drawn refused payment and returned the cheque. Bank A refused to accept the cheque, although the cheque bears Bank A's endorsement. Which bank is in error? Would the bank upon which the cheque is drawn incur any responsibility by paying the cheque?

Answer.—Unless the cheque were otherwise crossed, the words "not negotiable" are inoperative and should be disregarded. Such words, even on a crossed cheque, do not limit its transferability, but operate to prevent a holder acquiring title irrespective of defects in the title of the transferor, *i.e.*, the holder takes the cheque subject to any equities attaching to it, and can give no better title than he acquires. Bank B paying the cheque in good faith, would incur no responsibility, and should have paid it, but if it elected not to do so, Bank A should have redeemed it on demand.

PROMISSORY NOTE WITH A MEMORANDUM THAT IT IS TO BE USED AS COLLATERAL SECURITY.

Question 9.—A promissory note bears (1) on one corner the words "To be used as collateral security."

(2) In the body the words "To cover 50 per cent. of my subscribed stock in the above company."

Do either of these affect the negotiability of the note?

Answer.—If the words "to be used as collateral security" formed part of the note at the time it was issued, the note is invalid. An instrument which bears a statement by the maker that it is to be held as collateral is not a note. See Falconbridge, 2nd ed., 783.

The words "to cover 50 per cent. of my subscribed stock in the above company" do not affect the negotiability of the note.

SPECIAL REQUEST TO DRAWEE OF A BILL. EFFECT ON ACCEPTANCE.

Question 10.—A bill of exchange is drawn bearing the crossing, "Accept all drafts. Any errors will be rectified at office." Is this an unconditional bill, and does the crossing affect in any way the rights of third parties?

Answer.—We do not think that the crossing affects anybody but the drawer and acceptor. It is an independent undertaking of some kind on the part of the drawer towards the acceptor, but the acceptance would be unconditional.

NOTE PAYABLE TO ORDER "ONLY."

Question 11.—We have just seen a note payable to the order of W. E. Davis, *only.* Is the note legally drawn and negotiable?

Answer.—Such a note is legally drawn and negotiable. The word "only" in this instance is superfluous as the note being payable *to the order of* W. E. Davis becomes negotiable when endorsed by him. Had the note been drawn "I promise to pay W. E. Davis only" it would not be negotiable.

DUTY OF CUSTOMER IN PREPARING CHEQUES.

12.—In *MacMillan and Another* v. *London Joint Stock Bank* the House of Lords made a definite pronouncement as to the duty to be exercised by the customer in preparing cheques, and the decision may be summarized as follows:—

1. It is the duty of a customer in drawing a cheque to take reasonable and ordinary precautions against forgery.

2. If, owing to the neglect of such precautions, it is put into the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker.

3. It is no excuse for neglecting such duty for the customer to say that he had absolute confidence in a clerk.

CHEQUE WRITTEN IN LEAD PENCIL.

Question 13.—Is a cheque written with lead pencil (not indelible) legal?

Answer.—Yes, but there are obvious objections to the practice, and it should be discouraged. Certification should be refused except at the request of the drawer, and, if granted, the amount certified for should be written in ink beside the acceptance stamp.

CHEQUE WITH AMOUNT EXPRESSED IN FIGURES ONLY.

Question 14.—Is a cheque written in figures only, legal?

Answer.—Such a cheque is a valid order to pay, and a bank might be held liable for failure to honor it. The proper practice is to state the amount in both words and figures.

CHEQUE WITH AMOUNT EXPRESSED IN EMBOSSED FIGURES.

Question 15.—We are enclosing herewith a slip showing an embossing stamp, which is in use by one of our customers for completing the body of cheques instead of completing the body in writing. The words and figures embossed are as follows:

"Pay $750 and 37 cts."

Because the amount of the cheques is stated in figures only could they be regarded as not drawn in accordance with the definition of the Bills of Exchange Act? We shall be interested to hear whether or not such cheques could be regarded as cheques as defined in the Act. In our opinion this stamp is a very excellent device, giving absolute protection to the issuer of the cheque against an alteration of the amount, but argument has arisen as to whether or not they are justified in using this for the completion of the body of the cheque.

Answer.—A cheque, the body of which is filled in by a device which prints the amount in figures instead of words, as is usual, would be perfectly good, though the responsibility arising from the use of such a device might very well form the basis of a special arrangement between the customer using it and the bank.

CHEQUES SIGNED WITH RUBBER STAMP.

Question 16.—The Supreme Court of Pennsylvania recently held that the fact that a bank depositor had procured a rubber stamp which made a facsimile of his signature, was insufficient ground for charging him with a cheque on which his signature was forged by a clerk who used the stamp for the purpose.

Has a bank any right to refuse payment of cheques signed with a rubber stamp, having been instructed by the customer to pay such cheques? What protection has the bank against the danger of the stamp being used by an unauthorized party?

Answer.—If a bank consents to continue to keep the accounts of a customer who instructs it to pay cheques signed with a stamped signature, it cannot refuse to pay the cheques so signed, if otherwise in order.

As regards protection against the unauthorized use of the stamp, a bank would act very unwisely if it should oblige itself to accept such stamped signatures unless it had a contract with the customer that by whomsoever affixed, it should be regarded as his signature.

SIGNATURE BY MARK.

Question 17.—One of our Quebec branches sends us a cheque with pass-book attached drawn upon one of the other banks in town. The drawer of the cheque cannot write, but makes his mark and is witnessed by two clerks. The bank on which the cheque is drawn refuses payment until the mark is guaranteed by the presenting bank. This is an easy matter to do, but can the bank insist on the guarantee?

Answer.—A paying bank can insist on any requirement that it deems necessary to assure itself that it is protected in making the payment in such circumstances.

WITNESSING A SIGNATURE BY MARK.

Question 18.—What does witnessing a man's mark imply, identification of the man, or merely that the witness saw the mark made?

Answer.—Where the person making the mark is described in the document, the witnessing of his signature or mark implies *prima facie* that the person signing or making the mark is the person described in the document. For instance —if he were described as John Smith, lumberman, of Ottawa, the implication would be that the witness saw a John Smith, lumberman, of Ottawa, sign, or make his mark. The implication would not be conclusive; evidence would be admissible to show that the person actually signing or making his mark was not the person described in the document. If the person be not described in the document then the witnessing of his signature or mark merely implies that the witness saw the signature or mark made by an individual of that name. The identity of the individual with the person claimed to be a party to the instrument would have to be proven.

NOTE BEARING CORPORATE SEAL ONLY.

Question 19.—The Bills of Exchange Act, R. S. C. 1906, sec. 5, states that in the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal, etc., etc. Would this entitle a bank to cash a cheque of a company with no signatures of officers authorized to sign for the company, but with the seal of the company affixed to the cheque.

Answer.—The seal alone would be a sufficient signature, but must be affixed by some one duly authorized for the purpose, and the best evidence of such authority is the signature of one or more officers authorized either by law or by resolution.

ATTORNEY FOR A PERSON TRADING UNDER A FIRM NAME.

Question 20.—John Brown, who carries on business under the name of John Brown & Co., gives a power of attorney signed "John Brown" only. Has the attorney power thereunder to sign for John Brown & Co.?

Answer.—It is customary, and the better practice, that the constituent should describe himself in the power of attorney as "carrying on business under the name and style of John Brown & Co.," but we think that a duly constituted attorney of John Brown may bind his principal, to the extent of the authority conferred upon him, under any name in which the principal carries on business alone.

It is to be noted, however, that a power of attorney in which the business name adopted by the constituent is described would probably be held to limit the attorney's authority to transactions connected with that business. Thus a power of attorney from "John Brown, trading as John Brown & Co.," would cover transactions arising out of the business of John Brown & Co., but it would probably not cover transactions for another business carried on by the same man under another name.

Correct Form of Signature by an Attorney.

Question 21.—Which is correct of the following forms of signature by an attorney:

A.B.	A.B.	p. pro. A.B.
p. pro. C.D.	p. pro. C.D., Att'y.	C.D.

or is there a more correct form?

Answer.—The first form is erroneous if it is intended to be a signature by C.D. on behalf of A.B. If it has any meaning it is that A.B. is signing on behalf of C.D.; the second is no better; the third form is quite correct and that commonly used in England. The abbreviation in "p. pro." or "per pro." (*per procurationem*) signifies that the signature is affixed by the agent of and under the authority of the party whose name immediately follows, and may be read "by authority of A.B., C.D."

There is no better form than the last quoted in the enquiry, but "A.B. per C.D.," "A.B. by C.D.," "For A.B., C.D.," "A.B., by C.D., Att'y," are all in common use, and quite permissible; the chief point is that the form employed should clearly indicate that C.D. is acting as the agent of A.B. in the matter.

Cheques Signed by Attorney, the Depositor's Name being Written without the Addition of the Attorney's Name.

Question 22.—A B has given C D a power of attorney to sign cheques on his account, and in a letter to the bank asks that the cheques may be honoured when signed by C. D, by writing A B's name without adding anything thereto. Is it in order for the bank to honour cheques signed simply with the name A B, such signature being placed on the cheque by C D?

Answer.—This is quite in order. The only question involved is one of proof, and doubtless the bank would be quite as able to prove the authenticity of the signature in that shape as in any other.

If similar instructions had been given with respects to endorsements it would be contrary to the "Rules and Conventions respecting Endorsements," which provide that the person signing in such a case must indicate his authority by words added to the signature. This rule, however, was adopted as a matter of policy, not as expressing a legal requirement.

FORM OF SIGNATURE WHICH RENDERS ATTORNEY PERSONALLY LIABLE.

Question 23.—R. B. has authority under a Power of Attorney to sign for T. T. R. B. signs a note in this form: "R. B., Agent for T. T."

(1) Who is bound by this signature—R. B. or T. T.?

(2) In cases where a person is signing documents in a representative capacity, should he not use the name of his principal first, thus: "T. T. by R. B.," "Agent," or "Attorney?"

Answer.—(1) As the words "Agent for T. T." are, in effect, merely descriptive, R. B. is personally liable and T. T. is not liable. See second part of sub-sec. 1 of sec. 52, of the Bills of Exchange Act, and Falconbridge, 2nd ed., 566. Also lecture by Mr. Falconbridge to the Toronto Bankers Association, published in the October, 1920, number of the Journal.

(2) In such cases it is preferable, but not essential, that the name of the principal should come first.

JOINT STOCK COMPANIES—POWER OF PRESIDENT TO SIGN CHEQUES.

Question 24.—The shareholders of a company incorporated in Ontario pass a by-law authorizing the directors to appoint a president and other officers, and declaring that the president is to be the manager of the company, with power "to exercise all such powers of the company as are not required by law to be exercised by the directors or by the company in general meeting." Would this by-law empower the president to sign cheques, acceptances, etc., on behalf of the company?

Answer.—We think that the by-law is quite sufficient for the purpose named.

USE OF ABBREVIATION "LTD." ON BILL OF EXCHANGE GIVEN BY AN INCORPORATED COMPANY.

Question 25.—If an incorporated company signed paper, *i.e.*, notes, drafts, or cheques, with the word "limited" abbreviated so as to read "Ltd.," would the said paper be in any way invalidated?

Answer.—Such an abbreviation would in our opinion in no way affect the company's liability on the paper.

NOTE SIGNED BY TWO OF THREE EXECUTORS.

Question 26.—When there are three executors appointed to manage an estate, could any two of them, without consulting the third, make the estate responsible by attaching their names as makers or endorsers of a promissory note?

Answer.—If by "managing" an estate you mean that the executors have been given authority under the will to carry on business, the right of two out of three to bind the estate would depend entirely on the terms of the will.

Without special authority in the will the executors could not make the estate directly responsible for such obligations, even where they all act together. There may be cases, however, where the executors would be entitled to indemnity from the estate, thus making it directly responsible.

SIGNATURE OF A COMPANY WITHOUT THE NAME OF THE SIGNING OFFICER.

Question 27.—Where a party trades under the name of a company, as for instance, "The Canadian Iron Company," is it sufficient for him to use the name of the company in his signature, without the addition of his own name?

Answer.—Legally such a signature is sufficient, but practically it is open to many objections.

INDIVIDUAL USING TRADE NAME.

Question 28.—Jno. Robinson carries on business under the name of "The Rochester Pork Co.," for which he keeps a separate set of books. He has other assets which he treats as private assets not belonging to the business.

If a note were signed by him

"The Rochester Pork Co.,
"per John Robinson,
"John Robinson,"

would this be in any sense a joint note, and would both have to be sued in case of non-payment?

Answer.—In this case "The Rochester Pork Co." is merely another name for John Robinson, and the assets of the company are Robinson's personal assets, on precisely the same level as those which he treats as his private estate. The note is of no more force than if signed "John Robinson" alone.

If suit were brought against John Robinson on such an obligation the property which he holds either under the name of The Rochester Pork Co. or under the name of John Robinson would be liable.

FORM OF ENDORSEMENT BY ATTORNEY.

Question 29.—Does a power of attorney authorizing John Jones (not a member of the firm) to sign cheques for Smith & Co'y, entitle him to sign the firm name without adding his own name or initials as attorney?

Answer.—One who is lawfully authorized to sign for Smith & Company can certainly bind them by simply signing their name "Smith & Company," but it would be unwise to accept such a signature, because it does not record the name of the person by whom it is made, or the nature of his authority.

MARRIED WOMAN'S SEPARATE ESTATE.

Question 30.—Does a married woman who has a separate estate render that estate liable when she signs a note with her husband, or has she to sign another paper showing she intended to make her separate estate liable by her signature? (2) Does a married woman's name with that of her husband to a joint note, secure her dower to the bank discounting the note?

Answer.—(1) We are advised that no special declaration on the part of a married woman, that she intends to bind her separate estate, is necessary to make her undertaking binding thereon. If she has, as a matter of fact, separate estate at the time she signs a note, then her signature, either with her husband or in any other connection, binds it. (2) The legal question affecting separate estate of married women and their dower rights in their husbands' lands, are among the most intricate and difficult, and upon them judges and lawyers are constantly differing. We find ourselves unable, therefore, to give a satisfactory reply to this query. It would probably be held that an inchoate right to dower in her husband's lands would not be separate estate sufficient to make the promise of a married woman enforcible if she had nothing else. The above refers only to the law in the Province of Ontario.

NOTE.—In the Province of Quebec a married woman, if she is a public trader, may bind herself for all that relates to her commerce (C. C. Art. 179), but she cannot bind her separate property in any contract with or for her husband (C. C. Art. 1301).

JOINT AND SEVERAL NOTE PAYABLE "WITHIN 30 DAYS OF DEMAND OF PAYMENT."

Question 31.—Is there any legal objection to a note drawn in the following form:

Within 30 days after demand of payment for value received we jointly and severally promise to pay .... with interest at the rate of .... per cent. per annum from date until paid.

Answer.—No.

NOTE PAYABLE "ON OR BEFORE" 1ST JULY.

Question 32.—Would a promissory note made payable "on or before 1st July" come within the terms of the Bills of Exchange Act?

Answer.—We think such a note is "payable at a determinable future time, within the meaning of the Act," and that it therefore comes within its terms. The case of *De Braam* v. *Ford,* threw some doubt on this, but the judgment of the Court of Appeal in the same case clears the matter up.

BILL OF EXCHANGE PAYABLE "ON APRIL 1ST AFTER DATE."

Question 33.—Many of the leading commercial houses of Canada in making drafts on their customers draw them to read for example, "On April 1st after date," without any year being specified. Should there be any objection to this?

Answer.—This phrasing usually occurs through filling up draft forms printed "........ after date." "On April 1st, 1919," perhaps reads more smoothly, but if the date appears at the head of the draft there would seem to be no doubt of the meaning of "On April 1st after date."

BILL OF EXCHANGE; TIME OF PAYMENT DEPENDENT UPON ARRIVAL OF GOODS.

Question 34.—A bill of exchange is drawn "........ on arrival of goods, etc." This is not a bill of exchange under the terms of the Bills of Exchange Act. Is a bank running any risk in accepting this instrument (a) for collection, (b) for discount? Can it be protested? Is protest necessary to hold the endorser?

Answer.—The bank runs no risk in receiving this instrument for collection. The bank does run a substantial risk if it discounts the instrument, because if the goods were destroyed in transit the bank could not hold the acceptor and claim payment from him. Such an instrument not being a bill of exchange, cannot be transferred so as to give the transferee a better title than his transferor, and is not protestable within the meaning of the Bills of Exchange Act.

BILL OF EXCHANGE; DRAWN AT "SIXTY DAYS AFTER ARRIVAL OF GOODS."

Question 35.—Would you consider the following form of draft advisable: "Sixty days after arrival of goods at destination pay to the order of ———— "? If so, what evidence should the bank collecting the item be expected to get in order to fix the due date?

Answer.—A draft in the above form would not be a bill of exchange within the meaning of the Act; it is not payable at a determinable future time, since the goods might never arrive. The bank would therefore have no rights against the drawer or endorser arising out of the law respecting bills of exchange. It would be much better the bill should be drawn at sixty days sight, with an agreement that the collecting agents should hold it for such time as they might consider reasonable pending the arrival of the goods.

CHEQUE MADE PAYABLE ON CERTAIN DAYS OF THE WEEK ONLY.

Question 36.—A cheque drawn on another bank bearing the following notice was presented for deposit:

"This cheque is payable only on Monday, Wednesday and Friday of each week (legal holidays excepted)."

Is this a regular cheque within the meaning of the Bills of Exchange Act?

Answer.—No; an instrument is not a cheque if it is payable otherwise than on demand.

PROMISSORY NOTE PAYABLE "WITH INTEREST."

Question 37.—Is it proper to make a note payable "with interest" without stating the rate?

Answer.—A note in this form is perfectly valid, and interest is due from its date at the legal rate of five per cent.

BILL OF EXCHANGE PAYABLE "WITH BANK CHARGES"—NEGOTIABILITY.

Question 38.—Do you consider a draft drawn payable "with bank charges" negotiable?

Answer.—We would not consider this to be a bill of exchange. Section 28 (d) of the Bills of Exchange Act declares the sum payable by a bill to be "a sum certain" if it is payable according to a rate of exchange to be ascertained as directed by the bill. This is the only provision in the Act which could be looked to to support the proposition that a bill payable "with bank charges" is for a sum certain, and we do not think that it would come within this section.

GOODS SOLD IN ENGLAND BY CANADIAN FIRM, TO BE DRAWN FOR PLUS EXPENSES—FORM OF DRAFT.

Question 39.—A Canadian firm sells in England goods at a cost of $1,000, for which they are to draw at sight, covering every expense. Should they draw for $1,000 plus charges in Canadian currency, or for sterling amount, and if the latter at what rate of exchange?

Answer.—We think they might draw for the amount in currency, but in practice it would be more convenient to draw for such amount in sterling as would yield $1,000 at the current rate for sight bills.

CHEQUE WITH WORDS "ORDER" OR "BEARER" OMITTED.

Question 40.—A note is drawn payable to "John Jones" simply, the words "order" or "bearer" being omitted. Is such a note negotiable? Does the same rule apply to a cheque?

Answer.—A bill or cheque so drawn is payable to "order" (sub-sec. 1, sec. 22, Bills of Exchange Act).

CHEQUE WITH NAME OF PAYEE LEFT BLANK.

Question 41.—A cheque is presented payable to .... or bearer, with the name of payee left blank. Has paying bank the right to refuse payment on the ground that the cheque is not properly made out?

Answer.—The cheque is payable to bearer, and the bearer is entitled to payment on presentation. But the bank's only duty is to its customer, and if it cares to assume the responsibility to him of delaying the honour of his cheque until his further instructions are obtained it is free to do so, so far as anyone else is concerned.

CHEQUE PAYABLE TO "SELF," WITH WORDS "OR BEARER" SCORED OUT.

Question 42.—A cheque is drawn by John Smith, payable to "self," the word "bearer" being scored out; in other respects the cheque is in accordance with the common form. Is it legally payable to order?

Answer.—Such a cheque must be regarded as payable to John Smith (the drawer), or order. (Bills of Exchange Act, sec. 22, sub-sec. 1).

NOTE DRAWN IN FAVOUR OF A BANK WITH NO PLACE OF PAYMENT SPECIFIED.

Question 43.—A joint and several note made by three parties is drawn in favour of a bank, but there are no words indicating that it is payable to its order or to bearer. The note is dated at the place where issued, but no place of payment is specified in it.

In the event of the bank having to sue the parties, is its position quite as good as if the note had been made payable at its office, and to its order?

Answer.—The bank is under no disadvantage as regards the place of payment, except in respect to the matters mentioned in secs. 183 and 184 of the Act, and this can be obviated by presenting the bill, at any time before proceedings are taken, to each of the promissors.

The point as to the omission of the words "or order" or "or bearer" is not material. Under sec. 22, sub-sec. 1, a note drawn as above described is payable to order.

NOTE DRAWN TO MAKER'S OWN ORDER AND ENDORSED BY HIM.

Question 44.—Is there any objection to notes being made payable to the order of the maker and endorsed by him instead of being made payable to the party to whom they are given?

Answer.—There is no objection whatever to notes being made payable to the maker and endorsed by him. Our correspondent has reference to the objection taken to notes being made payable to a bank.

BILLS DRAWN ON TWO OR MORE DRAWEES ALTERNATIVELY OR IN SUCCESSION.

Question 45.—A draft is drawn on
(1) John Smith or
Joseph Brown.
(2) John Smith, or failing him,
Joseph Brown.

Would not these, under section 18, sub-section 2, of the Bills of Exchange Act, be simply orders for the payment of money and not bills of exchange? What would be the holder's rights against the drawer and acceptor?

Answer.—Drafts in either of these forms would not be bills of exchange. The first is addressed to two drawees alternatively, and the second to two drawees in succession.

As to the right of the holder against the parties, we think that they would constitute on the part of the quasi acceptors a contract to pay the money, which could be enforced in the same way as other contracts are enforceable. As to the drawer, we do not see on what ground the holders could sue him unless they had an understanding with him apart from the order itself, which would make him liable. The rights and liabilities of the parties on these documents would be entirely outside the law respecting bills of exchange.

NOTE IN FAVOUR OF JOINT PAYEES.

Question 46.—Bills of Exchange Act, section 19, sub-section 2. Is there any objection to the form "I promise to pay A.B. and C.D. or order ....?" It is claimed there is a legal weakness in this form of note, notwithstanding this section. I cannot see it from either a legal or banking point of view. Will you please decide for me?

Answer.—The instrument in question is in proper form. On endorsement by A.B. and C.D., the holder would obtain a good title against the promissor. There is no doubt either about the right of A.B. and C.D. as holders to sue the promissor.

FORM OF NOTES GIVEN BY JOINT STOCK COMPANIES.

Question 47.—(1) What is the proper wording of a note to be given by a limited company (say The A.B.C. Co., Limited) to a bank?

(2) A note reads "We promise to pay," etc., and is signed as follows:—

The A. B. C. Co., Limited,
Richard Roe, John Doe,
Sec.-Treas. President.

Could John Doe and Richard Roe be held personally liable on such a note?

Answer.—It is correct to make such a note read "The A. B. C. Co., Limited, promises to pay," in which case only the signatures of the authorized officers are necessary, or "We promise to pay," to be signed as set out in your second question.

In either case the company only is liable as promissor, and the persons who sign as its officers are not under any personal liability.

NOTE GIVEN BY TRADING FIRM—OBLIGATIONS OF THE FIRM AND THE PARTNERS INDIVIDUALLY.

Question 48.—Two partners in a trading firm wish to borrow a sum for use in their business, and give the bank a promissory note signed by both individually and made payable to the order of the bank. Would it afford the bank any greater security to have the note made to the order of the firm and endorsed by the firm to the bank?

Answer.—We assume the note is given by the parties jointly and not jointly and severally. If the two partners who give the note constitute the firm, their joint promise to pay gives the bank the same recourse as if the note were signed in the firm's name, but not a claim which, in the event of bankruptcy, would rank on their individual estates in competition with their individual creditors. If there were other partners the bank's position as holder of a note by two only would not be satisfactory, as it is not the obligation of the firm.

It is customary to require the note in such a case to be made by the firm and endorsed by the partners individually, and such a practice has undoubted advantages.

PROMISSORY NOTE WITH NAME OF ONE OF THE PAYEES INDICATED BY INITIALS.

Question 49.—(a) Is the form of note written below correct?

(b) Would a note endorsed in the same way but drawn in favour of a bank be a note sufficient in point of form to hold the endorsers if the bank had discounted the note?

(Note.)

$1,000. Vancouver, B.C., Dec. 16th, 1918.

One month after date we promise to pay to the order of R. H. and O. S. Jones the sum of one thousand dollars at the Bank of Montreal, here, for value received.

Jones Bros., Limited.

(Endorsement).

R. H. Jones.
O. S. Jones.

I hereby waive presentation, protest and notice of dishonour and guarantee payment of the within note.

R. H. Jones.
O. S. Jones.

Answer.—(a) Yes, as to its face, except that the signatures of the officers authorized to sign for Jones Bros., Limited, should appear below the company's name. If it were the intention of the promissors to make it payable to the two individual payees, it is properly endorsed, but it would be preferable to name them separately on the face of the note as "R. H. Jones and O. S. Jones." If "R. H. and O. S. Jones" is a firm name, the note should be so endorsed, but if these parties constitute the firm, the note. as it stands, is, in effect, properly endorsed.

(b) Yes. (See section 131 of the Bills of Exchange Act).

CHEQUE CROSSED "DUPLICATE."

Question 50.—A cheque is issued, having written across it the word "duplicate." If the bank should pay this what would be its duty as regards the original? Is the drawer liable on the original?

Answer.—While the mere issue of a duplicate cheque may or may not, according to the circumstances, be regarded as an order to the bank to stop payment of the original, it would certainly protect the bank from any liability to its customer if it should refuse payment of the original. A duplicate is, however, seldom used without notice being given stopping payment of the original. The drawer would undoubtedly be liable on the original to a holder in due course, hence a duplicate should not be issued without proper indemnity.

CHEQUE CROSSED GENERALLY—EFFECT.

Question 51.—A cheque is drawn as follows: "Pay John Brown draft or bearer" and is crossed, the crossing being a general one and not a specific crossing. Can the funds of that cheque be employed in purchasing a draft in favour of

Henry Smith? If not, in what way can the funds be employed?

Answer.—The only effect of the crossing of a cheque, except when the words "not negotiable" are added, is to make it payable through another bank. It would have no bearing upon the disposition of the funds covered by the cheque in question.

UNDATED CHEQUES—NEGOTIABILITY.

Question 52.—Are undated cheques negotiable?

Answer.—Section 27 of the Bills of Exchange Act states that a bill is not invalid by reason only that it is not dated. Undated cheques are therefore on the same footing as other cheques, and are negotiable. Also note section 165, sub-sec. 2 of the same Act.

POST-DATED BILLS.

Question 53.—What risk, if any, does the bank run in discounting a note dated ahead of the day of discount?

Answer.—A post-dated bill is by sec. 27 (d) of the Bills of Exchange Act, declared to be not invalid by reason of the post dating.

NOTE WITH DATE AND PLACE OF PAYMENT BLANK.

Question 54.—If in a note the date and place of payment are omitted, may the holder insert them?

Answer.—It would be a material alteration within the terms of the Bills of Exchange Act for the holder of a note to insert the place of payment. See sec. 146 (e) of the Bills of Exchange Act.

As regards the insertion of a date, where the date has been omitted, the rights of the holder are governed by section 30 of the Act.

NOTE DATED ON SUNDAY.

Question 55.—"A contract made on Sunday is void." Supposing a note dated on Sunday falling due is not paid, can the maker release himself of the obligation—or if the owner could prove by witness that it was done in error, would it bind him to pay it?

Answer.—It is not quite true to say literally that "a contract made on Sunday is void." Certain contracts so made are void (see R. S. C. c. 153; R. S. O. p. 2962; R. S. Q. art. 4466; R. S. N. B. Tit. 39, c. 134, s. 2; and 20 Geo. III. (P. E. I. c. 3). The Bills of Exchange Act expressly declares that a note is not invalid because dated on Sunday, and a holder in due course need not trouble himself on this point at all. The maker might possibly defend an action brought by the party to whom he gave a note dated on Sunday on the ground that the sale for which the note was given was void because made on Sunday, if that were the fact, and that, therefore, as between himself and the payee, the note was not good for want of consideration. But such a defence would not be good against a third party holding for value.

CHEQUE MARKED PAYABLE ONLY AFTER A CERTAIN DATE.

Question 56.—Is it obligatory upon a bank to pay a cheque upon presentation, when upon face of same a proviso making it mature fifteen years after date appears? Could such cheque be looked upon as a demand item, and if refused by the bank upon which it is drawn, could it be legally protested? I am assuming that the cheque is presented for payment sometime between the date of same and date of maturity according to proviso.

Answer.—Such a cheque as described is in effect a bill of exchange, payable after a certain date, and it is not only not obligatory on the bank to pay it before maturity, but if it did so it would incur a serious risk.

CHEQUE MADE PAYABLE AT A FUTURE DATE.

Question 57.—A cheque dated 15th December, 1901, has written across its face "payable 15th January, 1903." Does such a condition invalidate the cheque? If not, would the bank be justified in paying it before the 15th January, 1903?

Answer.—The crossing does not invalidate the instrument, but it is not a cheque; it is a bill of exchange payable on 15th January with three days' grace, and the bank could not properly pay it before maturity.

CHEQUE MADE PAYABLE AFTER DATE—DRAWEE ENTITLED TO DAYS OF GRACE.

Question 58.—A cheque dated 4th November, contains in the body the following instructions: "On 20th November pay $50." Are these instructions binding, and is the drawee entitled to days of grace?

Answer.—This is a bill of exchange payable on 20th November, with three days' grace. It is not a cheque, because it is not payable on demand.

POST-DATED CHEQUES—PAYABLE ON DEMAND ON OR AFTER THEIR DATE.

Question 59.—Will you kindly give me a ruling on the following which has arisen in this office:

A cheque, on the usual cheque form, was presented on the 15th of September, the cheque itself was dated the 17th, therefore being post-dated by two days. Should this cheque have days of grace, or, in other words, is it payable on the 17th or 20th of September? I do not think there has been any ruling either in the English or Canadian courts as to this, and, moreover, there seems to be considerable difference of opinion regarding this point. In the Gilbert Lectures delivered by Sir John Paget in London, Eng., a year ago, the lecturer was in considerable doubt as to whether the cheque should bear days of grace or not.

Answer.—A cheque is payable on demand; there are no days of grace on a demand bill and the cheque described should be honoured on presentation on the 17th or after. The fact that it had been previously presented does not affect the matter in any way.

POST-DATED PROMISSORY NOTE BEARING DATE AFTER DEATH OF MAKER.

Question 60.—Is a note in the following form collectible from the estate of the maker if he should die before March 18th, 1918?

$200. March 18th, 1918.

Two months after date for value received I promise to pay to the order of John Smith at the office of the .... Bank, St. John, two hundred .... dollars.

John Brown.

Answer.—A note is not invalid by reason of its being post-dated, and the amount is recoverable from the estate of the maker. See section 27, Bills of Exchange Act.

BILL PAYABLE "—— MONTHS AND A HALF AFTER DATE."

Question 61.—Would "——— months and a half after date" be a good bill?

Answer.—There have been no judicial decisions as to the effect of an order for the payment of money at "——— months and a half" after date or sight, and we find it somewhat difficult to form an opinion in the matter. Should a case come before the courts they might decide that a half month should be taken to mean some arbitrary period, such as 15 days. We think, however, that each case would have to be judged on its own merits, and that if the half month which the document covered was determinable, it would be a bill of exchange; but if not, then it would not be a bill of exchange, one of the essential features of which is that it is payable at "a fixed future time."

As an example take a bill dated 10th January, payable three and one-half months after date. This, we think, would be due on 25th April, 15 days being clearly one-half of the month of April. If the bill were dated 25th January it would be impossible to say what the half month would be.

CHEQUE ISSUED WITH BLANK SPACE BEFORE OR AFTER THE AMOUNT.

Question 62.—Referring to the judgment in *The Imperial Bank* v. *Bank of Hamilton* (1903), A. C. 49, would not a ledger-keeper be justified in ruling a line in the unused space where the amount is written in a cheque?

Answer.—Yes, and we think it would be in the interest of the bank he should do so.

CHEQUE DRAWN ON AN ALTERED FORM.

Question 63.—The name of the bank printed on a cheque was ruled out, and that of the one at which the drawer kept his account written in. Would this under any circumstances be a material alteration?

Answer.—Any change made in a cheque before the drawer signed it is not an "alteration" in any sense. If the change were made after the cheque was issued, it would, of course, invalidate the cheque, and the question sometimes arises as to the propriety of paying a cheque drawn on an altered form where the alteration is not initialed by the drawer. Ordinarily, no doubt, the surrounding circumstances justify the payment of such a cheque.

COMPLETION OF A CHEQUE SIGNED BY THE DRAWER IN BLANK.

Question 64.—If a cheque is presented to a bank by a third party, signed by the depositor in blank, and accompanied by the pass-book, the party presenting it stating that he was authorized to fill out the cheque for the amount of the balance, would the bank be justified in paying over the balance, on the cheque filled up by him, or by the bank at his request?

Answer.—This is, of course, not an alteration, but comes under sections 31 and 32 of the Act, which authorizes any person in possession of a bill which is wanting in any material particular to fill up the omission, provided this is done within a reasonable time, and strictly in accordance with the authority given.

In the case referred to the bank in paying the cheque would be protected if the authority given by the drawer to the person presenting the cheque empowered him to fill in the amount. If this should prove not to be within that authority, the cheque could not be charged to the customer's account.

Whether the bank should take the responsibility in any particular instance is a question of expediency. No doubt in the vast majority of cases the transaction would be perfectly regular, and the surrounding circumstances generally make the bank's course clear, but if it pays such a cheque it pays on the faith of the representations made by the party presenting it, and takes the risk of any fraud that may be involved.

RECEIPTS FOR MONEYS ADVANCED ON DISCOUNTED NOTES.

Question 65.—Is it necessary to have proceeds cheques or debit slips, when used for the purpose, signed by the maker of a note when he received the money, or when he renews the note? Does not the term "value received" in the note make this unnecessary?

Answer.—The words "value received" on the note constitute only an acknowledgment on the part of the promissor that he has received consideration for the giving of the note and have nothing to do with the disposition of the funds arising from the discounting of it. Good practice requires that there shall be a receipt for all moneys paid and the maker should be required to give one in the instance cited.

NOTICE TO OBLIGORS ON DISCOUNTED PAPER.

Question 66.—It has become a custom of the banks in this Province (British Columbia) to send out notices of maturity to acceptors of drafts and makers of notes. Does this custom extend to bankers in other provinces? It seems to me that it is more or less unwarranted and should be unanimously discontinued, as it would be to the advantage of all banks in economy of labour and expense to do so.

Answer.—We believe that this is almost a universal practice, and it seems to have much to recommend it from all points of view. It no doubt involves considerable expense in the way of postage, etc., but as a stimulant to the payment of the bills and a protection against forgery, it seems to be generally looked upon as worth all that it costs.

Bills Requiring Presentation by Mail—Power of Attorney in Favour of a Bank Manager to Accept, Signed in Name of Firm by one of the Partners.

Question 67.—A bill is drawn on a firm doing business at a point where there are no banking facilities, and is sent for collection to the nearest bank. The latter sends the drawee the usual form of power of attorney in favour of its manager, to accept the bill, which is returned with the firm's name signed thereto by one of the partners. Is the acceptance of the bill under this power of attorney binding on the firm?

Answer.—We are inclined to think that a power of attorney, given under the circumstances mentioned in the question, would bind the firm. We are assuming that the bill was drawn for partnership transaction and that the power of attorney was confined to accepting that bill.

Bill Accepted by the Collecting Bank on a Power of Attorney. Authority to Give Power of Attorney.

Question 68.—We send advice of a bill we hold for collection, with form of power of attorney enabling us to accept the same on behalf of the drawees, to the latter, a trading company in a neighbouring town. This they returned, signed "E ...... Trading Company, per J. E. Smith." We see their cheques on another bank frequently, and they are signed in this way and honoured by the bank. We accept for the drawees under this power.

Are we responsible to the owners of the bill for the validity of this acceptance, and assuming that Smith has a power of attorney from the trading company, is the above transaction a lawful delegation of his authority?

Answer.—We think you are responsible to the owners of the bill for the validity of this acceptance.

As regards the second point, the attorney cannot so delegate his authority, unless the effect of the power of attorney, taken in connection with the position of the attorney, and the nature of the business carried on, gives him power to do so.

POWER OF ATTORNEY TO ACCEPT BILLS IN FAVOUR OF A BANK MANAGER—OMISSION TO ACCEPT.

Question 69.—The manager of a bank which holds a bill for collection receives from the drawee a power of attorney on the form in common use authorizing him to accept the bill. This he neglects to do, but attaches the power of attorney to it. Would this give the holder of the bill a right to sue the customer?

Answer.—Clearly not, on the bill. We understand that the form in general use contains an undertaking to pay as well as authority to accept, and it might be said that this is a contract with the collecting bank entitling it to a remedy on contract. There is no reason why the power to accept should not be exercised after maturity.

POWER OF ATTORNEY AUTHORIZING A BANK MANAGER TO ACCEPT A BILL HELD BY THE BANK FOR COLLECTION.

Question 70.—A bill drawn at Bank B is sent to Bank A for collection. The manager of the latter procures from the drawee a power of attorney to accept the bill on the usual form. Is Bank B entitled to require that this power of attorney shall be lodged with it when the bill is presented for payment?

Answer.—We think that where a bank pays an obligation entered into by a customer through an attorney, it is entitled to have lodged with it the evidence of that attorney's authority, and that the practice of attaching the power to the draft is the proper one to follow.

BILL ACCEPTED UNDER POWER OF ATTORNEY—RIGHT OF BANK TO RETAIN THE POWER OF ATTORNEY.

Question 71.—A bill accepted by the manager of Bank B under power of attorney from drawee is returned to Bank A unpaid, Bank B retaining the power of attorney. Bank A being compelled to sue, requests Bank B to forward the power of attorney to attach to the acceptance. Bank B. refuses, on the ground that they must retain it for their protection, to prove the authority of their manager to accept the bill, but admits it may have to be produced in court. Bank A contends that they, being compelled to recover the amount, should be in possession of the proof of acceptance, and that the power ot attorney should naturally accompany the bill. Is Bank A entitled to receive it?

Answer.—We think it is quite clear that the bank which has acted on the power of attorney to accept is within its strict rights in retaining the document, but we also think that in adhering to its strict rights in such a case as you mention, when the other party concerned is a chartered bank, it is adopting a course which gives both banks needless trouble.

The attorney would of course have to appear in court if necessary to prove his right to accept, and as the collecting bank would probably be liable for the bill if the regularity of the acceptance were not provable, they are as much interested in proving it as the bank which owns the bill.

BILLS ACCEPTED BY ATTORNEYS AND OFFICERS OF INCORPORATED COMPANIES. COLLECTING AGENT'S RESPONSIBILITY FOR REGULARITY OF ACCEPTANCE.

Question 72.—(1) A bank received for collection a bill of exchange drawn on an incorporated company; does the bank incur any liability with regard to the acceptance which it takes, *i.e.*, that it is signed by the proper person or persons on behalf of the company? Would the bank's position be affected by the fact that the company's account was or was not kept with it?

(2) A draft drawn on John Jones is left at his store, and his clerk writes John Jones' name across it without adding any initials. Does the bank holding it for collection incur any responsibility?

(3) If the collecting bank allows a bill to be accepted by one who claims to be an attorney, and it afterwards transpires that his authority has been previously cancelled, what would be the collecting bank's position? Is the party giving such a power of attorney under any obligation to advise the banks generally of its cancellation, he having lodged it only with his own bank?

(4) Is the authority of the proper persons to accept a bill of exchange on behalf of an incorporated company fixed by statute or by by-law of the company? Should there not be a requirement that the names of officers authorized to bind a company by signing bills of exchange and promissory notes should be recorded in the county registry office?

Answer.—In answer to Questions 1, 2, and 3, it may be said generally, that the collecting bank is bound to use due diligence in procuring the acceptance of the drawee, and is responsible for the consequences of its negligence in this respect. An acceptance by unauthorized officials, or by one acting outside of the authority conferred on him, counts for nothing.

(4) The proper officers to sign on behalf of an incorporated company are usually fixed by by-law. It is not usual to find statutory provisions on the subject. If there were no by-law the question would depend upon the scope of the authority of the persons signing.

The parties who give a power of attorney are under no obligation to give notice of its cancellation to the banks generally. When a bank is asked to take the signature of an agent or attorney on his principal's behalf, it must either ask for evidence or take the risk of accepting the signature without evidence.

BILLS OF EXCHANGE REQUIRING PRESENTATION BY MAIL.

Question 73.—We receive for presentation a draft drawn by a firm in England on a party resident in a village adjacent to our office, from which there is a daily mail to this city, delivered here during business hours. We have no convenient means of presenting the draft personally, but we send the usual power of attorney slip for his signature. Are we justified in holding the draft for a few days, or does the bank incur liability if the draft is not presented through a notary within two days?

Answer.—You are not bound, unless you have special arrangements in the matter, to accept the duty of collecting agent, but if you do accept in this case you are bound to take steps to have the bill presented within a reasonable time, and if not accepted on the day of presentment, or within two days thereafter, to treat it as dishonoured.

The two days' limit mentioned in section 80 does not apply in the case you describe, but only to a bill which has been presented; we do not think that to advise the drawee that you are holding the draft, and to ask him to sign a power of attorney enabling you to accept, is a presentment. The only question involved in this particular view of the matter is whether by delay in the actual presentment you have failed in your duty as collecting agent to such an extent as to bring yourself under liability to the owner of the bill. To form an opinion on this point it would be necessary to have all the facts.

COLLECTIONS REQUIRING PRESENTATION BY MAIL.

Question 74.—Referring to the previous answer, will you be kind enough to give a somewhat fuller opinion in this matter, as it is one which is continually cropping up. You say, "The only question involved is whether you have failed in your duty as collecting agent, to such an extent as to bring yourself under liability to the owner of the bill." It is established by usage in Ontario, that presentment will be made of such bills, by sending the usual notice and power of attorney through the mails, and that if a reply is not received in (say) five days they will be treated as dishonoured. Would this bring it under the provisions of section 81 (b) of Bills of Exchange Act? In brief, is presentment of such bills excused by usage in Ontario? If the bill itself is sent through the mails (as seems to be meant by the Act), where there is a daily mail between the places, when do the two days (sec. 80) start to run—from the date of mailing by the bank, or the probable receipt by the drawee—that protest may be made under sec. 120, if necessary?

Answer.—It seems to us that there is no practice recognized in Ontario, "authorized by agreement or usage" in the words of the statute, respecting the presentment of bill through the post office, by which, of course, is meant the sending of the actual bill itself to the drawee. It is clear that a good many difficulties might arise if a bill were so sent, and unless it was done with the express or implied sanction of the owner of the bill, the collecting bank would, we think, be taking a very unreasonable risk.

The other practice referred to and which now prevails very generally, of sending a notice containing a blank power of attorney to accept, might be regarded by the courts as an established usage governing the conditions on which a collecting bank receives unaccepted bills drawn on persons whom it can only reach by mail. We would not like, however, to express an opinion as to this. Unless the collecting bank could successfully argue that the arrangement between itself and the owner of the bill in question was within these lines, by reason of express agreement, or by implication from the course of business between them, then the collecting bank would be responsible for the results of the non-presentation of the item.

There is no question involved here of presentment being excused. If there is anything in the argument at all the collecting bank's defence is that the bill was not sent to it for presentation in the ordinary way, but on the understanding that it would endeavour to procure acceptance by means of the notice and power of attorney, and having made that effort its duty was fully accomplished.

As regards the bearing of sec. 80 on the case of a bill sent direct by mail to the drawee, notice of dishonour must be given if the bill is not accepted within two days after the day on which it reached him. There would no doubt be a good deal of practical difficulty in keeping within the law on this point if bills were sent direct by mail; that is one of the difficulties to which we had reference in the remarks made above.

JOINT STOCK COMPANIES—AUTHORITY OF OFFICERS TO ACCEPT BILLS.

Question 75.—The secretary-treasurer of a limited company accepted drafts on its behalf. On enquiry from the president as to the authority of the secretary-treasurer I was told that it was not necessary that he should be specially authorized. On this information would I be justified in taking the acceptance?

Answer.—All that seems to be involved in the statement made by the president is his opinion that the secretary-treasurer, by right of his office, has power to bind the company in the way mentioned, and we do not think this is the case. Even, however, if the president meant to assert more, we do not think his assertion, if not consistent with the fact, would necessarily be binding on the company; it would depend on the scope of the president's authority. You would not, on the information given, be justified in taking this acceptance.

PRESENTATION FOR ACCEPTANCE—TIME IN WHICH TO BE MADE.

Question 76.—Could not something be done to effect a change in the law which holds banks responsible for payment of a draft if not presented for acceptance within forty-eight hours? It is often impossible to obtain acceptance in such a short period for various reasons, and it thus puts the bank in an awkward position, for sending notices about every bill outstanding beyond the allotted time involves a great deal of work. Why should not the banks be allowed to use their discretion and thus save time and money too?

Answer.—We do not think it possible or desirable to make any alterations in the law on this point. The provision respecting the duty of the holder of a bill to give notice of dishonour within a reasonable time is an essential one. If there were not some limitations of that kind the risks of drawers and endorsers would be indefinitely increased. They have a right to know within a reasonable time whether or not the party drawn on has become responsible for the bill. Under sec. 80 of the Bills of Exchange Act, it is possible for a bill to lie three or four days in the collecting agent's hands without notice, which is surely long enough. Thus, it might be received on Monday afternoon, presented on Tuesday; if not then definitely refused acceptance, the bank might wait until Thursday before treating it as dishonoured, and apparently it may be handed to the notary on that day and the notices mailed on Friday.

A remedy for the difficulty of which our correspondent complains would be for banks to make a reasonable charge for the collection duties which they undertake; but there is no reason why they should seek to discharge them in a less thorough manner than reason and law now require.

Refusal of Drawee to Give up Bill Left with Him for Acceptance.

Question 77.—Bank A presents draft for acceptance to drawee who after holding for some time refuses either to accept or to give up the bill. Bank A notifies forwarding bank B to this effect and asks permission to write off their books. Bank B refuses this request and instructs bank A to take the necessary legal proceedings to obtain possession of the bill. What action should bank A take?

Answer.—If bank A notified the forwarding bank of the non-acceptance of the draft immediately upon the expiry of the period of forty-eight hours after its presentation and, later, of its inability to recover the item, it has discharged its duty and is not bound to take legal action of any sort at the forwarding bank's behest, but might, of course, do so if it chose.

Domiciliation of Bills by the Acceptors.

Question 78.—May not the drawee of a draft accept it payable where he pleases? If such acceptance is not satisfactory to drawer or endorsers, can they object?

Answer.—Under section 38 of the Bills of Exchange Act, s.-s. 4, an acceptance to pay at a particular specified place is in effect declared to be a general acceptance, and is one which the holder cannot refuse. This provision might give rise to difficulties, as for instance, if the drawee were to make the bill payable at some unreasonably distant place. In practice, however, it works well enough, and it protects banks against the discharge of prior parties, which might result but for this provision, through taking an acceptance naming a different place for payment from that specified by the drawer.

PLACE OF PAYMENT OF A BILL—BLANK FORM OF ACCEPTANCE NAMING PLACE OF PAYMENT.

Question 79.—In making drafts on their customers it is the habit of some houses to provide a blank acceptance on the draft, naming the place of payment, ready to be signed by the drawee.

(1) Is this form for the acceptance an integral part of the bill or is it to be regarded as placed there for the drawee's convenience, subject to alteration by him if the place of payment is not to his liking, or to be ignored if he thinks fit?

(2) A draft on "AB, 145 C Street, Montreal," has across the end the following:

Accepted payable at the
Bank of A., Montreal.
5th May, 1898.
(Signature) ....

The drawee writes an independent acceptance below this form as follows:

Accepted, 5th May, 1898,
AB.

Would this bill be payable at the Bank of A or at 145 C Street?

Answer.—(1) We think the form for the acceptance cannot be considered an integral part of the bill, and that it may be altered or ignored by the drawee.

(2) We think that as the drawee was not bound by the form for acceptance described in this case, and as he clearly

ignored it, and showed by his act that he was giving a separate and independent acceptance, the terms of the latter must govern. The bill would therefore be payable at the address given.

PLACE OF PAYMENT OF AN ACCEPTANCE.

Question 80.—A bill dated at Woodstock and drawn on a party in St. John reads:

"Pay to the Merchants Bank here the sum of ."

Is this bill payable in Woodstock or St. John?

Answer.—It might be argued that "here" qualifies the order to pay, that is, that the bill is an order to pay the money in Woodstock. We think that the word "here" must be regarded as part of the description of the bank, that is, that the bill should be read as if made payable to the "Merchants Bank, Woodstock."

BILL OF EXCHANGE ACCEPTED BY ONLY TWO OF THREE DRAWEES.

Question 81.—A bank negotiates an unaccepted bill of exchange drawn upon three persons who are not partners. Two of these accept but the third refuses, and the draft is protested, for non-acceptance by him. The bill is not paid at maturity. What is the position of the bank as regards its claim upon the two who have accepted?

Answer.—The parties who did accept must be regarded as acceptors of the bill, and under all the liabilities which the law attaches to them as such.

ACCEPTANCE UNDER POWER OF ATTORNEY—DATE.

Question 82.—Power of attorney slip for collection which we held was sent to the drawee, who returned it dated 4th May. This was not received by us in the mails until the 9th May. Should the bank, in accepting this bill for the drawee under his power of attorney, sight it as at the 4th or 9th of May? The bill was drawn at 30 days sight.

Answer.—The bank should accept as from the 4th May, the day on which the bill was "sighted" by the drawee.

POST-DATED ACCEPTANCE.

Question 83.—A bill of exchange payable one month after sight is presented for acceptance on the 12th January. The acceptor writes his acceptance across it, but adds as the date "16th January." The holder pays no attention to the latter date, but treats the acceptance as of the 12th, presenting the bill for payment at maturity calculated from the 12th. The party refuses payment on the ground that the maturity must be calculated from the 16th, and the bill is protested for non-payment.

Is the holder justified in protesting the note, or having taken the acceptance without demur, is he obliged to abide by the date which the acceptor added?

Answer.—Section 130 (a) of the Bills of Exchange Act declares that the liability of an acceptor is to pay a bill "according to the tenor of his acceptance." This seems to involve, in the case put, that the obligation of the acceptor is to pay the bill at one month and three days after the 16th, the date which forms part of his acceptance. C therefore would not be justified in protesting the bill on the date mentioned, because he would have no claim on B until the time fixed by the acceptance should come round.

Under such conditions as the above the drawers and endorsers would be discharged, the holder having taken an acceptance which varied the effect of the bill as drawn.

ANTEDATED ACCEPTANCE.

Question 84.—Has the drawee of a bill, payable at or after sight, the right to antedate his acceptance, and if he does so, can the holder treat the bill as dishonoured and protest it?

Answer.—We do not think that there is any room for doubt on this point. An acceptance is qualified and discharges the prior parties, if it varies the effect of the bill as drawn. An order to pay at sight or at a given number of days after sight, would not, it seems to us, be complied with if the acceptor undertook to pay the amount at some other time, and we think the holder should refuse such an acceptance. If it were proper for a drawee to antedate his acceptance a single day, there is no logical reason why he should not antedate it a month or two months, and in the case of a draft drawn say at 60 days after sight, he might make the acceptance mature immediately—a most decided variation of the terms of the bill.

BILL DRAWN TO MATURE ON 31ST OCTOBER (INCLUDING GRACE) ACCEPTED "PAYABLE 31ST OCTOBER."

Question 85.—A bill dated 28th August, and payable two months after date, which would make it due on 31st October, is accepted by the drawee, who adds to his acceptance the following words: "Payable 31st October." Does this affect the due date?

Answer.—We presume our correspondent thinks that if the acceptor's statement is to be treated as part of the bill, three days of grace must be allowed after 31st October, but we do not think that it has this effect. The bill, according to the Act, is "due, and payable on the last day of grace," and the acceptor has merely noted this in a concrete form.

If it were otherwise, the acceptance would not be one which the holder should take.

SIGHT DRAFT—DAYS OF GRACE.

Question 86.—A draft was sent to this office drawn "At sight after March 1st." This draft was accepted dated March 4th. Was the draft due on 4th or 7th of March?

Answer.—The "March 1st" seems to have been intended to preclude presentation before that date. If presented on the 1st March in this year (in which the 3rd was a Sunday) it was accepted within the regulation period of forty-eight hours after presentation, and three days grace being added, it became payable on the 7th.

BILL AT THREE MONTHS SENT BY THE HOLDER FOR COLLECTION—NEGLECT OF COLLECTING AGENTS TO PRESENT FOR ACCEPTANCE UNTIL NEAR THE DATE OF MATURITY.

Question 87.—A bill dated 30th August, at three months, drawn by A. in favour of B. on the —— Mfg. Co. in the State of New York, was endorsed by B. and discounted with a branch of the Y. Bank. It was forwarded at once by the Y. branch to their branch at Niagara Falls for collection, and promptly sent on to the latter's Buffalo correspondents, who held it unaccepted until a few days before maturity. Acceptance was then refused, and the bill was protested and returned to the Y. Bank. The drawer and endorser claim to be released from liability because of want of diligence in the presentation of the bill. Could the amount be recovered from the Buffalo Bank, and if not, what is the position of the Y. Bank as regards the drawer and endorser?

Answer.—The above question was submitted to counsel by the Y. Bank, and by their courtesy we are permitted to publish the opinion given in the matter, as follows:—

"On this state of facts, we cannot advise that the Buffalo Bank is liable to the Y. Bank for anything more than nominal damages. If the Buffalo Bank had been a holder of the bill in the same way as the Y. Bank, it would have been under no obligation to present the bill for acceptance. Any obligation on its part to do so, arose because of its duty to the Y. Bank, as agent of the latter for collection.

"We are of opinion that the Buffalo Bank should, as such agent, have promptly presented the bill for acceptance, such a presentation being advisable from the point of view of the Y. Bank, because of the further security it would obtain should the bill be accepted, and because, should it be dishonoured, a right of immediate recourse against the drawer and endorser would accrue, and that for its want of diligence in this respect the Buffalo Bank is liable to the Y. Bank in damages.

"But, beyond merely nominal damages, the Y. Bank could not, in an action against the Buffalo Bank, recover except for loss actually sustained by reason of the negligence of the latter bank, and, on the assumption that the bank's rights against the drawer and endorser have not been affected by the delay in presentation for acceptance, and that the drawer and endorser are financially responsible for the amount, we do not think that the bank has, in fact, sustained any actual loss by the negligence of its agent. It must be borne in mind that the Buffalo Bank was the agent of the Y. Bank only, and not of the drawer and endorser. Had the Y. Bank been bound to the drawer and endorser to use diligence in presentation, so that failure to effect prompt presentation might have given the drawer or endorser a remedy against the bank, then, it might well be that the Y. Bank would have a corresponding remedy against its agent, but, on the state of facts given us, this does not appear to be the case.

SIGHT DRAFT DISHONOURED BY NON-ACCEPTANCE—LIABILITY OF DRAWER AND ENDORSER.

Question 88.—(1) A.B. and C.D. are the makers of a sight draft upon X.Y. in favour of M.N., who becomes a holder for value before acceptance. Acceptance is refused.

(2) A.B. is the maker of a sight draft upon X.Y. in favour of C.D., who endorses for value before acceptance to M.N. Acceptance is refused as in the former case. Are A.B. and C.D. as fully liable to M.N. on the draft of which they are the makers as they are on the other draft where they are drawer and endorser respectively?

Answer.—A.B. and C.D. are equally bound in each case.

BILL FOR COLLECTION RECALLED AFTER BEING MARKED GOOD.

Question 89.—A bill is presented by a collecting bank on the morning of the day it falls due, and is duly "marked good" by the bank at which it is accepted payable. Later in the day the collecting bank receives a telegram from their correspondent to return the bill. What is the proper course for the collecting bank to pursue in view of the fact that the bill has already been marked good?

Answer.—The bank's duty in such a case clearly is to advise its correspondent of the acceptance of the bill by the bank at which it is payable, and to ask further instruction. It should not permit the cancellation of the "marking" in any event.

Cancellation of Acceptance.

Question 90.—We receive a time draft for collection, the draft is accepted in the morning and in the afternoon the drawee comes to the bank, and asks to be permitted to erase his acceptance, saying his bookkeeper had forgotten a credit entry which he had just found out, and consequently does not owe the amount. The draft is protestable if not accepted.

Answer.—The accepting bank should never allow an acceptor to cancel his acceptance.

Collections—A Case of Negligence on Part of Collecting Bank.

Question 91.—A bank on presenting a draft for acceptance is tendered a post-dated cheque for the amount. This it holds, together with the unaccepted draft, until maturity, when the cheque is dishonoured. The bank having failed to notify the drawer and endorsers of the draft that it had not been accepted, does it lose its right of recourse against said drawer or endorsers?

Answer.—We think the position is that the collecting bank has allowed all the parties on the bill to be discharged, and that it has no recourse except to make the best it can out of the dishonoured cheque.

Negligent Persons—How they should be Dealt with.

Question 92.—What is the best way to deal with parties who are negligent about business matters and never accept drafts in required time—who never attend to their notes when due until told on day of maturity, and frequently refuse drafts upon the most paltry pretences?

Answer.—Indulgent treatment and reasonable remonstrances never appear to effect any improvement in the business habits of such persons, and the only way to deal with them is to enforce the rules. This may, and probably will cause trouble, but it is the right thing to do, and if fair warning is given and any show of temper or discourtesy is avoided on the part of the bank, it will also prove the best thing to do.

RIGHT OF A BANK TO REFUSE TO CERTIFY OR ACCEPT CHEQUES.

Question 93.—Has a bank a right to refuse to certify a cheque presented by the drawer, and payable to his own order, because it is not endorsed?

Answer.—We do not think that the ordinary contract between a bank and its customer obliges it to accept or certify cheques. We think that all it is bound to do is to pay the cheques on presentation if there are funds. The most that could be said would be that the bank should not refuse to certify cheques issued by its customer, when there had been a long established practice on its part of doing so, without reasonable notice. We think, however, that when a cheque is presented by the customer himself, no question of this kind could arise.

THE ACCEPTANCE OR CERTIFICATION OF CHEQUES.

Question 94.—A bank refuses to put an acceptance stamp over its ledger-keeper's initials certifying cheques and bills domiciled with it. (1) Is there any way in which we could compel them to do so, and (2) are we justified in accepting these cheques and bills as certified?

Answer.—A bank cannot be compelled to accept or certify cheques or bills, and therefore cannot be compelled to mark them in any way. Their legal obligation is simply to pay the money on demand, if the customer has placed them in funds for the purpose.

(2) If you are satisfied that the initials are those of the ledger-keeper of the bank, we think you are justified in accepting such a certification.

MARKED CHEQUES—MANAGER'S INITIALS NOT EQUIVALENT TO AN ACCEPTANCE.

Question 95.—Is the presence of the manager's initials on a cheque a sufficient guarantee of its being marked good or accepted?

Answer.—If the question has reference to the common practice of the manager putting his initials on the margin of the cheque as authority to the ledger-keeper to mark it, we would not regard that as constituting an acceptance on the part of the bank.

WHAT CONSTITUTES VALID ACCEPTANCE.

Question 96.—We to-day had a bill payable at a chartered bank, and in accepting the same they simply put the stamp thereon without any initials or folio. Would this be considered a valid acceptance?

Answer.—The initials and folio are confirmatory of the stamped certification, and while desirable are not absolutely essential.

CHEQUE CERTIFIED BY A BANK "GOOD FOR TWO DAYS ONLY."

Question 97.—Can a bank refuse payment of a cheque which it has marked "good for two days only" if presented after expiration of the two days?

Answer.—We think that after the two days have expired the cheque must be regarded as if it had not been marked by the bank, and if there are then no funds its refusal would seem to be in order.

CHEQUE CERTIFIED "GOOD FOR TWO DAYS ONLY."

Editing Committee Journal of the Canadian Bankers' Association, Toronto:

Dear Sirs,—The reply given in the Journal for July, 1899, to question No. 97, is so entirely at variance with that which has, I believe, hitherto been the accepted view of the matter, that I may perhaps be pardoned for drawing your attention to it. Writing from memory, I think I am correct in stating that this question arose some years ago in a very important way, when the tenders for the construction of the Canadian Pacific Railway were under consideration by the Government at Ottawa. The Minister of Railways, Sir Charles Tupper, I think, refused to accept the deposit made by one of the tenderers on the ground that the cheque had been marked good by the Bank of Montreal, Ottawa, with a time limit attached. As soon as the question arose it was at once referred, we were told at the time, to the authorities of that bank at head office, and the reply was made that the cheque would be considered good until paid, in spite of any limit attached to the acceptance.

This answer was in accord with the view held by bankers generally when the dispute arose, and I remember it was the cause of a good deal of angry discussion in the press at the time.

If the cheque is charged to a customer's account at the same time that it is marked good with this qualification, how is the acceptance to be cancelled? Is the time limit really of any effect legally, because I have been instructed that it has none?

I submit these remarks with the utmost deference and only for the purpose of making the matter still more clear.

Yours truly,
E. D. ARNAUND.

Annapolis, N.S., 21st Aug., '99.

We think that the answer we have given is correct. The fact that the bank in the case cited had declared that the cheque would be considered good until paid does not affect the question. It merely meant that they were willing to go beyond the contract entered into on the cheque, and in that particular instance it was done because the drawer of the cheque particularly wished it to be held good, and the limitation in the acceptance was an error on the part of the officer who marked the cheque.

On the general question we think that when a cheque is marked with a time limit the bank might regard itself as free from liability thereon, and reverse the debt to the customer's account after the expiry of the time, although in practice it is quite unlikely that either the customer or the bank would wish to do this. If, however, the customer were to say to the bank under such circumstances: "You are no longer liable on the cheque which you marked a week ago and charged to my account. I wish you to reverse this entry and to pay other cheques which I have drawn," we think it very doubtful indeed whether the bank would not be liable for damages if it should refuse to honour cheques to the extent of the balance which the customer's account would show after reversing the entry for the marked cheque.

The "moral" of the whole matter seems to be that banks should not accept cheques except in the absolute form.—Ed. Com.

CHEQUE MARKED "GOOD FOR TWO DAYS ONLY."

Question 98.—A correspondent writes:

In your issue of July, 1899, you have answered the question No. 97, which is: Can a bank refuse payment of a cheque which it has marked "good for two days only," if presented after the expiration of the two days? "We think that after the two days have expired, the cheque must be regarded as though it had not been marked by the bank, and if there are then no funds, its refusal would seem to be in order."

Will you allow me to express the opinion that this answer does not appear clear to me, as in accepting the cheque and stamping it "good for two days only," the account of the maker of the cheque has been debited and the amount deducted from the balance. Should I understand that you mean that the debit entry be cancelled and the amount of the debit recredited if the cheque is not presented for payment within two days of its acceptance by the bank?

Besides, on general principles, I am of opinion that the acceptance of a cheque by a bank renders it liable to the same extent as its acceptance of a bill of exchange drawn upon it by a foreign customer, and its responsibility cannot be affected by limitation.

I have always been under the impression that the stamping of cheques "good for two days only" was only to prevent accepted cheques from remaining outstanding.

What protection would there be to payees of cheques residing in a different place than where the cheques are payable, if the acceptance of a bank can be declared void on account of unavoidable delay in presentation?

Answer.—This subject was more fully discussed in the number of the Journal for October, 1899, and we would refer you to what was there said. Our answer to Question 97 is based on the theory that at any time after the expiration of the two days the bank's liability on the cheque ceases, and that the drawer therefore has a right to request the bank to cancel the entry in his account.

No doubt the acceptance of a cheque in proper form by the bank makes it liable to the same extent as the acceptor is liable on any ordinary bill of exchange. The point is that an acceptance "good for two days only" is not properly speaking an acceptance at all, but only a special kind of engagement, limited by its terms. We see no hardship in this view of the case, for of course no person is bound to take the cheque. If one chooses to do so he knows that if not presented within the time limit payment is not necessarily guaranteed by the bank.

The rights of holders of cheques which are accepted in the proper way differ materially from those of holders of cheques accepted conditionally on their being presented within two days.

CERTIFICATION OF A CHEQUE BY THE DRAWEE BANK—RIGHT OF THE BANK TO CANCEL ITS ACCEPTANCE AFTER DELIVERY.

Question 99.—A cheque which has been dishonoured is handed by a bank to a solicitor for collection. On presenting it at the bank on which it is drawn, he is informed that the party has just made a deposit, and payment is offered. He has the cheque marked good, however, and takes it to his own bank, which declines to receive it because it still appears to be the property of the bank for whom he is acting. He returns to the drawee bank and asks them to pay it, whereupon they cancel the acceptance and inform him that it was given under a mistake; that although the party made a deposit it was to cover a previous overdraft, and there were still no funds. Had the bank a right to cancel their acceptance?

Answer.—The question is asked with reference to a cheque drawn on an American bank. In the United States it seems to be admitted that under such circumstances the bank would have a right to cancel the certification of the cheque. See "Daniel on Negotiable Instruments," 4th edition. The passage is too long to quote, but it is to the effect that the certification of a cheque may be revoked provided no change of circumstances has occurred which would render it inequitable for such a right to be exercised.

CHEQUE CROSSED BY PAYEE BANK PAYABLE AT PAR AT A BRANCH OF ANOTHER BANK.

Question 100.—A customer of a bank at St. Hyacinthe which has not a branch in Montreal, presents his cheque on the St. Hyacinthe Bank, which the latter at his request stamps "payable at par at the Merchants Bank of Canada, Montreal," adding thereto the initials of one of its officers. Would the St. Hyacinthe bank be bound to honour the cheque if presented either by the Merchants Bank of Canada or the party to whom the cheque was sent?

Answer.—It would seem clear to us that if the Merchants Bank should cash the draft on such a crossing they would be entitled to look to the St. Hyacinthe bank for its payment, not on the ground that the cheque was accepted or marked good, but on the ground that the drawee bank had requested them to pay the cheque on its behalf. The stamp and initials, we think, constitute such a request.

The position of the party to whom the cheque was sent is somewhat difficult, and we should hesitate to say without further consideration that the St. Hyacinthe bank would be bound to pay the cheque to him, alfhough it would seem reasonable to have the bank responsible to this extent in view of what they had placed upon the cheque.

CERTIFIED CHEQUE—RESPONSIBLITY WHEN BANK FAILS BEFORE PAYMENT OF.

Question 101.—A cheque on bank " B " is deposited with bank " A " by Jones & Company, who endorse it. Does bank " A " release Jones & Company when it gets the cheque certified by bank " B "? If so, does it not leave bank " A " without redress, for if, instead of certification it had asked for cash, bank " B " would no doubt have said, " Send it in with your deposit to-morrow."

This of course refers to such circumstances as those mentioned, where bank " B " suspends immediately after certification.

Answer.—Bank " A " can protect itself fully by demanding payment, and if this is not forthcoming, by treating the cheque as dishonoured. If, because of its unwillingness to take so extreme a step, it chooses to be put off by bank " B " in the way mentioned above, and the latter suspends, " A " must take the consequences of its complaisance.

If there be doubt as to the solvency of the bank, the only safe course is either to demand payment on presentation or not to present the cheque at all in the afternoon, but send it in the ordinary exchanges next morning. If then dishonoured, the holder can charge it back to the depositing customer, as the presentation in such case would be made in due course.

CERTIFIED CHEQUE—ITEM STANDING FOR SEVEN YEARS.

Question 102.—A customer's account shows a debit entry outstanding for seven years. Assuming it to be a marked cheque, has the obligation of the bank to pay it ceased under the Statute of Limitations? The customer claims that the amount should be credited back to his account. What is the proper course to pursue?

Answer.—While the bank could not be sued on a marked or accepted cheque after the period mentioned, it would nevertheless be contrary to the usual practice of banks to take advantage of this defence. We think, therefore, that unless it can be established that the cheque never passed out of the drawer's hands, he should not have the amount refunded to him. If he passed the cheque away and got value for it, he clearly has no further interest. He has no right to insist on the bank sheltering itself behind the Statute of Limitations, and it is also to be remembered that something may have happened to interrupt prescription of which the record has been lost, *e.g.*, the holder may have written to the bank asking if the marking still held good, and may have had such a reply as would establish a new date from which the statute runs.

MARKED CHEQUE OUTSTANDING TEN YEARS. CHEQUE NEVER ENTERED. NO FUNDS HELD.

Question 103.—The manager of a bank marks a customer's cheque "good," but omits to charge it to his account. The cheque is given to a third party as security in connection with a contract, who holds it for over ten years. In the meantime the customer fails, the manager dies, and when the cheque is presented there is no record of it in the bank's books, and no money to the credit of the customer's account. Under these circumstances is the bank obliged to pay the cheque?

Answer.—Unless it could be successfully set up that the bank had assented to the deposit of the cheque as collateral security, we think no claim could be established. If the marking is to be considered as an acceptance, the claim would, under ordinary circumstances, be barred by the Statute of Limitations. If it is a mere representation, not intended as an acceptance, the same result would follow.

CERTIFIED CHEQUE—WOULD THE DRAWEE BANK BE JUSTIFIED IN REFUSING PAYMENT ON THE DRAWER'S INSTRUCTIONS?

Question 104.—Would a bank be justified in refusing to pay a certified cheque if instructions had been received from the drawer to stop payment?

Answer.—The bank by certifying or accepting a cheque has become liable to the holder and the drawer's right to countermand payment is at an end unless he delivers the cheque to the bank for cancellation.

SAVINGS BANK CHEQUES MARKED "O.K." BY LEDGER-KEEPER.

Question 105.—It is a custom in Canadian banks that they will not mark cheques on their savings department, but instead have the ledger-keeper "O.K." them, adding his initial to the "O.K." The procedure is like this—a cheque is presented for certification at the wicket and the ledger-keeper advises the presenter that he cannot "mark" the cheque, but he will "O.K." it, which he does, initialing the "O.K." and at the same time making a memorandum of the amount in the customer's account. Is this "O.K." equivalent to or equal to a "marked certified or an acceptance," with the bank's official stamp for that purpose? After a lapse of a reasonable time might the bank refuse payment of this "O.K.'d" cheque? From the bank's standpoint, could it be contended that the "O.K." on the cheque was merely a memorandum signifying that there were funds at the moment in the account to provide for the cheque; that that entry in the ledger (which is merely made in pencil and the amount not taken from the balance) was only a ledger-keeper's memorandum and could in no wise be construed as an acceptance of the bank to hold funds for an unlimited time against the cheque? If there has been any decision on the point, I should be glad if you would quote me its finding.

Answer.—The procedure outlined is most irregular, and we doubt if it is a "custom" in Canadian banks, as claimed.

The marking of a cheque "O.K." under the circumstances stated, amounts to certification, and a contention such as that suggested on the part of the bank would be untenable. We know of no specific ruling on the point, but we should expect the head office of any bank to give a peremptory one if the following of such a "custom" by any of its branches came to its knowledge.

CHEQUE ENDORSED BY MARK.

Question 106.—A cheque payable to order is endorsed by "mark" (properly witnessed). It is presented through the clearing house bearing the usual stamped endorsement of the presenting bank. Is the endorsement regular, or should the presenting bank be asked to guarantee it?

Answer.—The endorsement is quite regular.

ENDORSEMENT BY RUBBER STAMP.

Question 107.—Could a bank's customer repudiate the following or similar endorsement, made with a rubber stamp on a cheque taken in deposit, the name as well as the instructions being stamped:

"Pay to the order of Bank,
John Smith,"

Answer.—If such an endorsement was unauthorized the customer might of course repudiate it, but we think he would be bound to return the money which had been credited to him for the item on the strength of the unauthorized endorsement.

ENDORSED BY RUBBER STAMP.

Question 108.—Now that stamped endorsements are becoming so much used by large business firms and others, would it not be as well to have some definite understandings regarding them. The question might arise as to whether they are legally valid discharges. There does not seem to be any provision made for them in the Bills of Exchange Act, and there is evidently some doubt regarding them, as they are frequently guaranteed by bankers when sending documents endorsed in this fashion, forward for collection. They seem to have come into use as a means of doing away with the old and more laborious way of writing the endorsements. Some banks are in the habit of taking letters from their customers admitting liability for such endorsements; but how about the drawer (in the case of a cheque)? Is he to be satisfied by a stamped endorsement? Cannot he demand a written discharge? Of course cheques endorsed in this way always come to the payee bank through the medium of another bank, and are usually endorsed "for deposit only," but I have noticed cases, more especially in cheques coming from American institutions, where they have not had even that clause inserted.

Answer.—Stamped endorsements put on with the authority of the party are quite as binding as writtten endorsements and although from the point of view of the difficulty of proving their genuineness, the practice has some objectionable features, it has become altogether too common and too useful to be now withstood. As far as the banks are concerned, what we have said in reply to question No. 107 above, as to the liability of the bank to which items are paid, applies to this case also, and this affords protection for the bulk of such transactions. The bank with which the item is originally deposited by the party whose endorsement is put on by means of a stamp, would naturally protect itself by a written agreement with its customer, such as our correspondent refers to.

As to the rights of the drawer of the cheque to be satisfied with the endorsement, we do not think that he has any ground for complaint. At any rate in order to prove that the bank had no right to charge the cheque to his account, he would have to prove the invalidity of an endorsement.

ENDORSEMENT BY RUBBER STAMP.

Question 109.—Is an endorsement by rubber stamp a valid endorsement under the Bills of Exchange Act?

Answer.—An endorsement by rubber stamp, if made with the payee's authority, is valid.

ENDORSEMENT BY PARTNER IN A FIRM.

Question 110.—A cheque in favour of Smith, Brown & Company is endorsed with a rubber stamp "Smith, Brown & Company, per   ," one of the firm signing his name underneath. Is this endorsement regular?

Answer.—Under clause (b) of the Conventions and Rules respecting endorsements, the absence of words indicating the authority of the person signing makes the endorsement irregular. To meet the rule the partner endorsing in the usual manner should add such words as "one of the firm."

ENDORSEMENT BY AN OFFICIAL ON BEHALF OF A COMPANY.

Question 111.—What is the legal difference, if any, affecting either the bank itself or its signing officers, between the following forms of signing drafts, receipts, orders, etc.: "The Bank of Canada, A. B., Manager or Director," and "For the Bank of Canada, A. B., Manager or Director?"

Answer.—We think there is no difference whatever, either affecting the bank or the signing officer, in the effect of the above modes of signature. Either would be held to indicate that A. B. was signing on behalf of the bank.

ENDORSEMENT OF CHEQUE DRAWN TO ORDER OF "CASH."

Question 112.—Should a bank obtain the endorsement of maker if a cheque presented for payment is made out to the order of "cash."

Answer.—The usual practice is to treat cheques to order of "cash" as payable to bearer, but "cash" not being a fictitious or non-existing *person,* cheques drawn in this way do not strictly speaking come under the category of bearer cheques. The proper course would be to pay such cheques only under special arrangement with the customer, though if the practice of cashing such cheques is already well established, it would not seem advisable to break off without notice to the customer.

BILL FOR COLLECTION—SHOULD BE ENDORSED BY BANKS SENDING SAME FOR COLLECTION.

Question 113.—A bill is sent for collection bearing on the face the stamp of the bank which sent it. The stamp shows the name of the bank, the branch, etc. The item is not made payable to the sending bank, and is not endorsed by it.

Has the bank receiving this bill for collection any right to object?

Answer.—One of the responsibilities assumed by the collecting bank is the return of the money, should the prior endorsement prove to be forged or unauthorized. On this ground they might properly ask that the bill should be endorsed to them by the bank sending it for collection, so that their recourse might be clear.

NOTE MADE PAYABLE TO SELLING AGENT—NEGOTIABILITY.

Question 114.—Can the endorser give a bank a title to the following note:

The J. P. Jones Company, Limited.
$147.14. Pittsburg, Pa.

On four months after date I promise to pay to the order of J. J. Beckworth (who is the selling agent for the J. P. Jones Company, Limited) at .... the sum of one hundred and forty-seven 14/100 dollars, for value received.

(Signed) P. Epworth.

Answer.—Yes.

ENDORSEMENT OF CHEQUE—NAME OF PAYEE INCORRECTLY SPELLED.

Question 115.—A cheque is made out on the Dominion Bank, Winnipeg, payable to "Alex. Coming, or order." It is presented at the Merchants Bank, Portage la Prairie, and is endorsed "Alex. Cumming." this being the proper way to spell the name. Would section 64 of the Bills of Exchange Act cover this?

Answer.—This cheque, while payable to Alex. Coming, was intended to be payable to Alex. Cumming, in which case the endorsement was sufficient under the Bills of Exchange Act.

ENDORSEMENT OF CHEQUE — PAYEE INCORRECTLY DESIGNATED.

Question 116.—(1) Bank A holds a cheque on Bank B payable to "The Bonshaw Creamery Co. (Buttermilk) or order." This company is non-existent and cheque is endorsed "The Bonshaw Creamery Co., being the Bonshaw Dairying Co., J. A. Robertson, Sec'y, John McManus, Treas.," and also by Bank A with their regular endorsing stamp. Bank B certifies the cheque but refuses to cash on the grounds that endorsement is irregular. A contends that the endorsement is regular and that B incurs no liability in cashing. Is A correct?

Answer.—We think that the endorsement mentioned is regular (see clause (b) of the Rules and Conventions respecting Endorsements).

ENDORSEMENT OF CHEQUE PAYABLE TO THE ORDER OF A CLUB.

Question 117.—A cheque is payable to the order of the "Metropolitan Polo Club" (an incorporated company). Would it be in order, under the Rules respecting Endorsements, if it were endorsed simply "The Metropolitan Polo Club" with a stamp, or should the name of someone acting on behalf of the club be added? It has been said that the simple endorsement is sufficient under clause (a), but under the third paragraph of clause (b) it is provided that where an endorsement purports to be that of an incorporation the official position of the person or persons signing must be stated.

Answer.—An endorsement reading simply "The Metropolitan Polo Club" would, if put on with proper authority, be a valid endorsement apart from the rules, but the provision in clause (b) referred to was deliberately adopted as tending to protect banks from irregularities in the matter of endorsements, and such an endorsement would not be regular under the rules. The name of the officer may be written or stamped, but in order that the endorsement may be regular it is necessary that the name of the proper officer should be added.

ENDORSEMENT IN THE NAME OF A REGISTERED COMPANY—CAPACITY AND AUTHORITY OF PERSON SIGNING SHOULD BE INDICATED.

Question 118.—Please advise whether, according to the "Rules respecting endorsements" adopted by the Council of the Canadian Bankers' Association, the following is a regular endorsement:

The Boston Shoe Mfg. Co.,
per C. P. Daniels.

Answer.—No; there should be something to indicate the capacity in which Mr. Daniels signs, and that he is authorized to do so. If Mr. Daniels is the sole proprietor of the business, and is registered as doing business under the name of the Boston Shoe Mfg. Company, the addition to his endorsement of the word "proprietor" would make it regular.

ENDORSEMENT IN THE NAME OF AN INCORPORATED COMPANY—OFFICIAL POSITION OF PERSON SIGNING MUST BE STATED.

Question 119.—One of the "Rules respecting Endorsements," adopted by the Canadian Bankers' Association, is as follows:

"If purporting to be the endorsement of a corporation, "the name of the corporation and the official position of the "person or persons signing for it must be stated."

(1) There seems to be some doubt as to what is covered by the term "corporation."

(2) A cheque payable to the "Smith Manufacturing Company" is endorsed simply "The Smith Manufacturing Company." Is this endorsement regular under the Rules assuming the company not to be an incorporated body?

Answer.—(1) We think the rule covers either a real "corporation" or persons trading under a quasi-corporate name; the endorsement in either case would "purport" to be that of a corporation.

(2) The endorsement of "The Smith Manufacturing Company" purports to be the endorsement of a corporation, whether the company is incorporated or is a private partnership. If it were a private partnership we think the rule would be complied with by the party endorsing it adding to his signature such words as the following:

"The Smith Manufacturing Company,
"By John Smith, one of the partners."
or, "By John Smith, Sole Proprietor."

INDIVIDUAL CARRYING ON BUSINESS UNDER A TRADE NAME. RULES RESPECTING ENDORSEMENT OF CHEQUES, ETC.

Question 120.—A person carries on business under the firm name of "The Quebec Lumber Company" and deposits a declaration to that effect in the prothonotary's office in accordance with law. He uses this name in signing cheques and other documents, but without adding his own name thereto.

Is such a signature valid, and would a bank handling the bills or the parties accepting them, incur any risk?

Answer.—A person carrying on business under a quasi-corporate name, such as the above, binds himself when he signs his trade name, just as though he wrote his own name. The only question involved is one of proof: that is, that the name "The Quebec Lumber Company," was written by the person who carries on business in that name.

But although the signature without any addition is valid, it is to be remembered that in the matter of endorsing items for deposit in other banks, it would be contrary to the "Rules and Conventions respecting Endorsements," which require such an endorsement to bear in addition the name of some person, with an indication of the authority by which he signs.

PREFIX "MRS." TO AN ENDORSEMENT.

Question 121.—Does the words "Mrs.," placed before a woman's signature as an endorsement, invalidate it in any way?

Answer.—No. The sole question in all cases is that of identity, and assuming that the name with "Mrs." prefixed is written by the payee of the cheque, the endorsement is valid.

ENDORSEMENT OF CHEQUE PAYABLE TO "MRS. JOHN SMITH."

Question 122.—A cheque is drawn in favour of and endorsed, "Mrs. John Smith." Is the endorsement legal?

Answer.—We think that this endorsement is irregular, "Mrs. John Smith" not being a "proper signature" under sec. 64 of the Bills of Exchange Act. See Falconbridge, 2nd ed., 591. The bank should not pay the cheque unless endorsed in the usual manner, as follows:

Mrs. John Smith, Sarah Smith,	or	Sarah Smith, wife of John Smith,

ENDORSEMENT OF CHEQUE—OMISSION FROM ENDORSEMENT OF DESCRIPTION OF PAYEE.

Question 123.—A cheque drawn by the Order of Foresters payable to "Mary Jones, widow of our late member, John Jones of Court M———," is endorsed simply "Mary Jones." The bank on which it is drawn returns it, requesting a guarantee of endorsement. Are they entitled to this?

Answer.—We think not. The cheque is properly endorsed as it stands, and the paying bank is not entitled to further protection than that which the Act gives—the obligation of the bank which has received the money to return it should it prove that the Mary Jones who endorsed it is not the Mary Jones described in the cheque.

ENDORSEMENT BY MARRIED WOMEN OF CHEQUES MADE PAYABLE IN THEIR MAIDEN NAMES.

Question 124.—(1) Mrs. Smith's maiden name was Mary Jones. She presents to a bank for payment a cheque payable to Mary Jones. Has she authority to endorse "Mary Jones"?

Are there any legal points involved in this case?

(2) If she holds mortgages must she have her name on these changed?

Answer.—(1) A cheque given to a married woman, drawn payable in her maiden name, is clearly her property, and she has a right to endorse it in her maiden name. It is customary in such cases, to have the endorsement made in some such way as this:

"Mary Jones, wife of John Smith.
Mary Smith."

There are no legal points involved. The question is purely one of identity.

(2) Mortgages taken in her maiden name are not affected by her marriage. There are different ways in which assignments and releases are drawn in such cases. She might, for example, be described in the document as "Mary Smith, wife of John Smith, etc., formerly known as Mary Jones, of the town of ...., Spinster." In this case, also, it is merely a question of making the identity clear.

NOTE.—By the law of the Province of Quebec, on and after marriage, if there is no ante-nuptial contract, the husband becomes vested with the sole right of administration of all the private property of his wife. A married woman therefore cannot validly pass the property in a cheque payable to her order without the authorization of her husband, except as against a drawer or endorser, who, under sections 130 and 133 of the Bills of Exchange Act, are precluded from questioning her right and capacity. (See C. C. Arts. 177 and 1298).

CHEQUE PAYABLE TO JOHN SMITH, GUARDIAN FOR MARY AND PATRICK BROWN, ENDORSED "JOHN SMITH, GUARDIAN."

Question 125.—A cheque made payable to "John Smith, guardian for Mary and Patrick Brown," is endorsed "John Smith, guardian." Is this sufficient?

Answer.—We think the full description is unnecessary, and that if he endorsed simply "John Smith," without any addition to his name, it would be a valid discharge.

CHEQUE PAYABLE TO "JAMES SMITH, OVERSEER," ENDORSED "JAMES SMITH."

Question 126.—With reference to your reply to Question 125, is a bank justified in returning as not properly endorsed a cheque which is payable to "James Smith, Overseer," and endorsed simply "James Smith"?

Your answer to question above referred to, indicates that such an endorsement is sufficient. Should the principle involved be generally accepted, and the endorsement stamp of the depositing bank be accepted as a sufficient guarantee to the paying bank in such cases?

Answer.—It seems to be the practice in England to treat such endorsements as incorrect, but we are advised that they are sufficient and consequently we can only say that we think a bank would not be justified in returning the cheque described merely because the word "overseer" has been omitted from the endorsement.

We are of opinion that so long as the endorsement on an item is such that (assuming it to have been put on by the payee or endorsee) it constitutes a valid discharge, it should be accepted without question from the depositing bank, which would, in such a case, be responsible if the endorsement proved to be defective.

CHEQUE TO THE ORDER OF "JOHN SMITH, COLLECTOR OF CUSTOMS," ENDORSED BY THE ASSISTANT OR ACTING COLLECTOR.

Question 127.—A cheque is payable to "John Smith, collector of customs." Are the following endorsements in order:

James Brown, Assistant Collector, or
William Jones, Acting Collector?

Answer.—The above endorsements are not in order, although it is quite likely that the circumstances would justify the bank in accepting them. The payment to the assistant or acting collector would not be valid if the cheque were given to John Smith as his personal property.

CHEQUE PAYABLE TO "JOHN SMITH, TRUSTEE," ENDORSED "JOHN SMITH."

Question 128.—Has a bank a legal right to refuse to accept the endorsements mentioned below:

Cheque payable to "John Smith, Trustee," and endorsed "John Smith"; or payable to "John Smith, Treasurer," and endorsed "John Smith"?

Answer.—We think not. There can be no question but that the endorsement "John Smith" in either case would be sufficient; nevertheless in practice it is well to have the quality in which he signs added, and the payee might reasonably be asked to conform to the common practice.

CHEQUE PAYABLE TO "JOHN SMITH" ENDORSED "JOHN SMITH, SECRETARY JONES MANUFACTURING COMPANY."

Question 129.—Is the endorsement "John Smith, Secretary Jones Manufacturing Company," upon a cheque payable to the order of "John Smith," irregular? Section 52 of the Bills of Exchange Act would seem to give the payee the right to endorse in this way if he so elects.

Answer.—We think such an endorsement as you describe, that is, the endorsement of a payee cheque drawn to order who has merely added to his name a description of his official position, may be regarded as a sufficient endorsement, but if instead of endorsing as "John Smith, Secretary Jones Manufacturing Company," he should endorse "Jones Manufacturing Company, by John Smith, Secretary," that would, we think, not be an endorsement that would pass the title to a cheque drawn in favour of John Smith or order.

ENDORSEMENT "J. SMITH" ON CHEQUE TO ORDER OF "JOSEPH SMITH."

Question 130.—A cheque payable to the order of Joseph Smith is endorsed "J. Smith." Would the bank be justified in refusing to pay it if endorsed by and presented by another customer?

Answer.—Such an endorsement is as valid, if made by the payee of the cheque, as the full endorsement "Joseph Smith" would be, and we think that the bank would not be justified in refusing to pay the cheque, except under the circumstances or for reasons which would cause them to refuse if the full name had been signed.

IRREGULAR ENDORSEMENT ON A MARKED CHEQUE.

Question 131.—A sight draft on one of our customers, accepted by him payable at our office, is presented when due and marked good. When it comes in from the bank holding it next morning, we find that it is payable to "M ——— Hotel Co.'y," and endorsed (presumably on behalf of the hotel company) "J. S. ——," but without anything to show that the signature is so intended. (1) Have we a right to send back the item as being improperly endorsed? (2) If so, what is the position of the bank holding it? They cannot protest, as the bill is a day overdue. The bill had passed through the hands of another bank before coming into their hands. (3) Should we take any notice of the instructions of our customer not to pay it on such endorsement?

Answer.—(1) You have a right to refuse payment of the bill unless properly endorsed, and such an endorsement as you describe is not sufficient. (2) The holder to whom you return the bill need not protest it to protect himself. It is not a case where the bill is dishonoured for non-payment, but where the acceptor has in effect given the undertaking of his bank that the item will be duly paid, when presented with the proper endorsement. The holder should send it back to the bank from which it was received, and the latter is bound to return the money, if any, which it has received from the item. If the bank has received value for the item to which its title is disputed, it must establish the title, or return the money. (3) We do not think your customers have any right to object to your paying the item. If you pay on an endorsement to which they object, their only remedy would be to sue you, and in course of the proceedings establish the fact that you had not paid the money to the proper party. If they did this, the bank to which you paid it would have to reimburse you.

CHEQUE TO THE ORDER OF "BEACOCK & CO.," ENDORSED "BEACOCK & CO., PER C. E. BEACOCK."

Question 132.—Will you kindly give me your opinion on the following? A local bank deposited a cheque payable to the order of Beacock & Co., endorsed Beacock & Co., per C. E. Beacock. Mr. C. E. Beacock is one of the firm of Beacock & Co., which is composed of three members. Has a member of a firm a right to endorse as above without designating his power of attorney to do so, and do you think I should accept this endorsement without requesting to have a guarantee?

Answer.—As C. E. Beacock is a partner in the firm, he does not need a power of attorney, and he should sign "Beacock & Co." The addition of the words "per C. E. Beacock" is needless, but there is no obvious objection to it. You would be justified in accepting the endorsement as it stands, without requesting a guarantee, under clause (f) of the Conventions and Rules respecting endorsements adopted by the Canadian Bankers' Association, which reads as follows:—

"In the case of all items, whether restrictively, irregularly, or conditionally endorsed, sent through the exchanges by members of the Clearing House, the stamp of the member sending the item shall be deemed and held as guaranteeing the authenticity of all endorsements thereon, even if such guarantee be not express."

IRREGULAR ENDORSEMENTS—NEGLECT TO INDICATE AUTHORITY OF PERSON SIGNING.

Question 133.—Are the following endorsements regular under the rules?

A. John Smith,
p. Tom Jones.
B. The Winnipeg Marble Company,
William Brown.

In the second case there is no incorporated company; Brown carries on his private business under the name quoted.

Answer.—Both of the above endorsements must be regarded as irregular within the terms of the rules. (See last part of Rule (b), and Rule (c). They do not in either case indicate the authority of the person signing.

In discussing these Rules in his article printed in the Journal for January, 1898, Mr. Lash explained the reason for treating such endorsements as irregular. We understand that there was a great deal of discussion before the principle was adopted by the committee. It was urged that no rule should be made which would bar legal endorsements which these admittedly were, but the conclusion of the committee as a whole was in favour of this rule, as tending to greater care and regularity. Some of the reasons urged are quoted by Mr. Lash in the article referred to. (See p. 194).

CHEQUE TO ORDER NOT ENDORSED: ENDORSEMENT OF PAYEE'S BANKER.

Question 134.—Do you approve of paying cheques drawn to order bearing in lieu of the payee's endorsement the following: "Deposited to the credit of (the payee), endorsement guaranteed. John Smith, Manager, Bank of A."

If the payee should afterwards dispute the payment, would the above form any protection?

Answer.—Such a statement written on the back of the cheque is of course not an endorsement in the proper sense, but may be regarded as the receipt of the Bank of A., with a declaration that they have credited the amount to the party entitled to receive payment. This does not comply with the terms of the customer's order, and it is clear that if the payee did not approve of it, he could repudiate the act of his bankers, and in that event the paying bank would doubtless have to recognize his claim, but would be entitled to look to the Bank of A. for protection.

As a practical question the chances of trouble are exceedingly remote, nevertheless, we do not think the practice can be regarded as a satisfactory one, and it should be resorted to as rarely as possible. We would also think it better that the writing should purport to be an endorsement, even though this is unauthorized, by the use of such phrase as this: "For John Brown, the Bank of A., John Smith, Manager." This would not constitute a regular endorsement under the rules, as the authority of the person signing is not, and in the nature of things could not be, indicated. A bank, however, which undertakes to endorse on behalf of a customer implies that it has authority to do so, and is responsible if the endorsement is repudiated.

STAMPED ENDORSEMENT BY BANK ON CHEQUE IRREGULARLY ENDORSED BY PAYEE.

Question 135.—What does the following stamp signify to the bank on whom a cheque is drawn when placed on local cheques, as regards former endorsements?

For Deposit Only.
Through.....................Clearing House
Feb. 19th, 1896.
To the credit of the Bank ....
....
pro Manager.

Answer.—As to the effect of the common form of stamped endorsements of banks on cheques passed through the clearing house, the reply to Question 134 covers all that we could say. Under the law, as understood here, the presentation by any bank of an item for payment by the bank on which it is drawn involves an implied representation that it has the right to collect the amount, and if any of the prior endorsements should prove to be forged or unauthorized, so that as a matter of fact it had not the right to receive the amount, it would be bound to pay it back.

ENDORSEMENT "DEPOSITED TO THE CREDIT OF"—SIGNATURE OF TELLER.

Question 136.—Is a cheque payable to John Jones or order and endorsed as follows, technically correct?

Deposited to the credit of
John Jones,
in the Bank of Canada, Salt Creek, Alta.
John Bull, Teller.

Is the signature of the teller binding on the bank, or does it require the signature of the manager or the accountant to bind? I have been advised that it is a recognized fact between banks that the signatures of the above officers are necessary to hold a bank.

Answer.—The paying bank is under no obligation to accept anything else than the actual endorsement of the payee and anything else than that is not "technically correct." Whether the teller's signature to the endorsement given is sufficient to bind the bank named therein would depend upon circumstances and customs, but it is generally accepted among banks that the manager's or accountant's signature should be appended to such endorsements. There are obvious objections to accepting the signature of the officer through whose hands the funds are presumed to have passed.

CHEQUE—GUARANTEE OF ENDORSEMENT.

Question 137.—A cheque payable to "Samuel Smith or order" is endorsed:

"Pay to the order of Bank ....
"Deposited to credit of ....
"Samuel Smith."

Can the bank on which it is drawn legally refuse payment unless the endorsement is guaranteed by the depositing bank?

Answer.—This is in our opinion a restrictive endorsement under section 68, Bills of Exchange Act, but so far as any dealing with the item is governed by the "Rules respecting Endorsements" a guarantee is unnecessary. Under section (f) of the Rules the deposit by the collecting bank makes the latter a guarantor of the endorsement.

The legal rights of the parties are, however, not touched by these Rules. Under sub-section 3 of section 68, Bills of Exchange Act, the endorsee in this case would appear to have a right to receive payment of the bill, and to sue any party whom his endorser could have sued. We are therefore of opinion that the drawee bank cannot legally refuse payment.

LIABILITY OF BANK UNDER ITS ORDINARY ENDORSEMENT STAMP WITHOUT GUARANTEE CLAUSE.

Question 138.—At points where no Clearing House exists and the rules fixed by the Bankers' Association do not therefore govern, does the ordinary bank endorsement stamp (without guarantee clause) hold the depositing bank liable for a reasonable time in case any of the endorsements on cheques or other items deposited by them prove unauthorized or irregular?

Answer.—The regulations regarding endorsements made by the Bankers' Association apply to items exchanged between banks directly, as well as through the Clearing House, and the depositing bank would be liable in the circumstances indicated.

ENDORSEMENT "FOR IDENTIFICATION ONLY."

Question 139.—A cheque is endorsed by the payee thus: "John Smith for identification only." Can he be held liable in case of non-payment?

Answer.—No; the endorsement amounts to an endorsement without recourse.

CHEQUE PAYABLE ONLY ON PERSONAL ENDORSEMENT OF PAYEE.

Question 140.—A depositor notifies his banker that he has issued a cheque payable to the order of John Smith, and wishes it paid only on the personal endorsement of John Smith. Is the banker bound to respect such a request, or would he be justified in accepting said cheque, tendered by payee's clerk, and endorsed "For deposit only to credit account of John Smith"?

Answer.—We think the bank is bound to act on the instructions of its customer in the case mentioned. He has a right to countermand payment, and the bank is bound to obey his orders. The instructions quoted do not go as far as that, but they are very much in the same line, and it would, we think, be held to be within the customer's rights to require the bank only to pay the cheque when it is endorsed as he specifies.

In any case the holder of the cheque the payment of which has been refused on the instructions of the drawer, would have no claims whatever against the bank. If the cheque were endorsed by the duly constituted attorney of the payee, and refused because of the customer's orders, the bank would still not be liable to anybody. The holder would, however, have a valid claim on the drawer, and (if notice of dishonour were given) on the endorser.

IRREGULAR ENDORSEMENTS—CHEQUE PAYABLE TO THE ORDER OF "JOHN BULL & SON," ENDORSED "THE . . . BANK OF CANADA—CREDIT ACCOUNT OF JOHN BULL & SON, TRUST ACCOUNT."

Question 141.—Cheque drawn payable to John Brown is first endorsed "Pay to the order of John Bull & Son, John Brown." Cheque is endorsed afterwards "The . . . Bank of Canada, credit account of John Bull & Son, trust account." Is the latter endorsement sufficient to give the bank a discharge from John Bull & Son?

Answer.—We think that the endorsement should be signed "John Bull & Son," but no liability would attach to the bank if the proceeds of the cheque did, in fact, come into the hands of the endorsees or became subject to their disposition.

ENDORSEMENTS. RIGHT OF ACCEPTING BANK TO REQUIRE ENDORSEMENT OF DRAFT BEFORE PAYMENT.

Question 142.—Bank A sent a demand draft made payable to their own order and not endorsed by them to bank B for collection. Bank B presented to drawees who accepted draft payable at bank C, to whom it was duly presented and accepted, but was refused by them when sent in on deposit and marked "not endorsed." Bank B claims that drawees when they accepted the draft took the responsibility of its not being endorsed and that bank C could not refuse payment, having already accepted it. Bank C claims it was only an order to pay when endorsed and in order, the same as a cheque, and that their acceptance stamp only signified that they held funds. Which bank is correct?

Answer.—Bank C is right; they would not be justified in paying without endorsement, and their certification could not be taken to mean more than that they would pay the item when it was completed by endorsement.

DEPOSIT TO THE CREDIT OF A JOINT ACCOUNT OF UNENDORSED CHEQUE PAYABLE TO THE ORDER OF ONE PERSON.

Question 143.—A cheque made payable to the order of John Jones, not endorsed by him, is deposited to the credit of a joint account John or Mary Jones. Is this legal?

Answer.—No. Such cheque not bearing the endorsement of John Jones must be deposited to the credit of an account in the name of John Jones only.

CHEQUE PAYABLE TO THE ORDER OF ONE PERSON MUST BE ENDORSED BY HIM BEFORE IT CAN BE DEPOSITED TO THE CREDIT OF A JOINT ACCOUNT.

Question 144.—A cheque of the Department of Militia and Defence, Ottawa, for $100.00, payable to the order of

John Smith but not endorsed, was presented to us by Mrs. John Smith, who wanted to take cash for $40.00 and deposit the balance to a joint account in the name of herself and her husband, payable to either or survivor. Would we be justified in depositing the amount of this cheque to the credit of a joint account, endorsing the item in that manner, and afterwards permitting Mrs. Smith to withdraw the $40.00 from the account? We have no agreement on file *re* the joint account.

Answer.—No. The endorsement of John Smith should be obtained before the cheque is either cashed or deposited in the joint account.

DRAFT PAYABLE TO "STEPHEN JONES AND MRS. WILLIAM SMITH," ENDORSED "S. JONES AND SARAH SMITH."

Question 145.—A draft made payable to Stephen Jones and Mrs. William Smith, and endorsed "S. Jones" and "Sarah Smith," is refused on the ground that the endorsation is irregular. Do you not think it would be advisable to request Canadian bankers to use the Christian name of married women when selling drafts, etc.?

Answer.—The practice of making drafts payable to married women in the form used in the above case is open to serious objection and should, we think, be discouraged.

CHEQUE IN FAVOUR OF "MRS. A. A. SMITH" ENDORSED "B. B. SMITH."—RESPONSIBILITY OF PRESENTING BANK.

Question 146.—A cheque payable to Mrs. A. A. Smith or order is endorsed "B. B. Smith," and paid under a guarantee.

(1) What is the exact position of the paying bank under the guarantee?

(2) Would its position be different if the cheque had been endorsed "B. B. Brown"?

Answer.—(1) We think the presenting bank guarantees that "B. B. Smith" is the proper signature of Mrs. A. A.

Smith, the payee of the cheque, and that if this should turn out not to be the case they would be bound to return the amount of the cheque to the paying bank.

(2) We do not think a cheque drawn in favour of Mrs. A. A. Smith and endorsed "B. B. Brown" should be cashed even under a guarantee. If Mrs. Smith had remarried and her new name was Brown, no doubt the guarantee would have the same effect as in the first instance mentioned, but if it should prove that there is no connection between Mrs. A. A. Smith and B. B. Brown, we do not think the guarantee would affect the question at all. The presenting bank would probably be bound to return the amount of the cheque to the paying bank as money paid to them under a mistake.

ENDORSEMENT OF BILL OF EXCHANGE PAYABLE TO A MARRIED WOMAN IN THE PROVINCE OF QUEBEC.

Question 147.—May a cheque or bill, payable to a married woman residing in the Province of Quebec, whether she has, or has not, a marriage contract, be properly paid or negotiated on her endorsement alone, and without her husband's consent?

If the act of payment or negotiation took place outside of the Province of Quebec, would that make any difference in the position of the parties?

Answer.—We are of opinion that the provisions of the Bills of Exchange Act must govern with respect to the powers of a married woman in the matter of endorsing or negotiating cheques and bills of exchange, and wherever these differ from the Quebec law they must prevail.

So far as her capacity to incur liability as an endorser is concerned, the Act leaves the matter untouched. Section 47 makes "capacity to incur liability co-extensive with capacity to contract." If under the code she is not able to contract, her endorsement on a bill does not create any liability on her part as an endorser.

This does not, however, affect her power to endorse or negotiate a cheque or bill in such a way that the drawee may lawfully pay it, or the transferee become the lawful holder.

Under sections 130 and 131 of the Act, both the acceptor and the drawer are precluded from denying the capacity of a payee to endorse, and a subsequent endorser is precluded from denying the regularity of the previous endorsements. Under these sections, therefore, if a bank should accept a cheque payable to a married woman, it is bound to pay it on her own endorsement, for it is precluded from denying her capacity to endorse. If the bank is so bound it clearly has the right to charge the cheque when paid to the drawer's account, but apart from this the drawer also is precluded from denying the capacity of the payee to endorse.

Considering that a bank is bound to pay its customers' cheques according to their tenor, and that in making a cheque payable to a married woman, the drawer in effect declares (because of such preclusion) that the amount is to be paid to her notwithstanding any disability she may be under, we think that a bank in the Province of Quebec is not only not bound to require the husband's authorization, but might be liable to its customer for damages should it refuse his cheque because of the absence of such authorization only.

The question being a very important one, we thought it well to submit it to counsel in the Province of Quebec, from whom we received the following reply:

"I am of opinion that under the law of this Province "the wife may endorse so as to pass the title to a bill of "exchange, even though she does not make herself liable, and "that a plea of her incapacity could not be raised by an "endorser, drawer, or acceptor, as they are precluded from "doing so by the Bills of Exchange Act, sections 130 and "131."

As regards the second part of the question, the effect of payment or negotiation outside of the Province of Quebec, we think that the relative rights of the parties would depend upon the law where the transaction took place. A married woman is under no disability that would call her endorsement into question in any Province other than Quebec.

ACCOMMODATION ENDORSEMENT BY MARRIED WOMAN—INVALID IN THE PROVINCE OF QUEBEC.

Question 148.—A married woman holding property in her own right endorses a note as an accommodation endorser. Could a bank, having discounted same for the promissor, collect from her? Would it be necessary for her husband to consent to her doing business in her own name, or would his signature be necessary on the note along with hers?

Answer.—In the Province of Quebec, under the circumstances stated, the woman's endorsement would simply be invalid,—a wise and vital remnant of French law that provides for the protection of women.

As the law of Nova Scotia, from which Province this question came, is almost the same as that of New Brunswick, the following opinion obtained from Mr. Fred. R. Taylor, Barrister-at-law, St. John, N.B., will be of interest to our readers:—

In reply to the following question: "A married woman "holding property in her own right endorsed a note as an "accommodation endorser. Could a bank, having discounted "same for the promissor, collect from her? Would it be "necessary for her husband to consent to her doing business "in her own name, or would his signature be necessary on "the note along with hers?"

Although there is no decision by the New Brunswick courts on this or on any analogous point, there would seem to be no doubt that in this Province the bank could collect from the married woman.

As to the second question the consent of her husband to her doing business in her own name is not required by the New Brunswick Married Woman's Property Act, 1895, and would be immaterial. His signature to the note would not in any way affect the wife's liability out of her separate estate.

Of course at common law the contract of a married woman would be void. Certain relief could be obtained in equity, and this relief was further greatly enlarged by the various Married Woman's Property Acts. The provisions of the

Married Woman's Property Act, 1895, 58 Victoria, cap. 24, relating to the power of married women to contract, are as follows:—

Section 3, sub-sec. 2. "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued in all respects as if she were a *feme sole* .... and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise."

This is practically the same as the similar Nova Scotia Statute, Revised Statutes Nova Scotia, cap. 112, sec. 13: "A married woman shall be capable in all respects as if she were a *feme sole.*

(*a*) Of entering into any contract and of making herself liable upon such contract in respect to her separate property to the extent of such property, and

(*b*) Of suing or being sued in contract, tort or otherwise."

It is almost word for word with the English Married Women's Property Act, 1882, sec. 1, sub-sec. 2: "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise, in all respects as if she were a *feme sole.*"

The English Courts held that the Act conferred no general capability to contract on the married woman, but merely a capability to contract "in respect of and to the extent of her separate property." *Palliser* v. *Gurney,* 19 Q. B. R. 519. To remedy the limitation of the liability on contracts, which under the adopted interpretation seemed capable of being carried to almost absurd results, the Act was amended by 56 and 57 Victoria, cap. 63. Sub-section 3 of sec. 3 of the New Brunswick Act similarly broadens the effect of sub-sec. 2: "Every contract entered into by a married woman otherwise than as agent—

(*a*) Shall be deemed to be a contract entered into by her in respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

(*b*) Shall bind all separate property which she may at that time or thereafter be possessed of or entitled to."

Since a married woman is under the New Brunswick Act liable for her contracts to the extent of her separate property (where she has not contracted as agent being deemed to have contracted in respect to her separate property) it would seem that her endorsement of a note, though for accommodation, would render her separate property liable. There are conditions under the somewhat similar New York statute to the effect that a married woman is liable on a note made by her for her husband's accommodation:

Bowery National Bank v. *Sniffen,* 54 Hun. 394.

Queen's County Bank v. *Leavett,* 56 Hun. 426.

The Ontario courts have also reached a like result on this point under a statute much resembling as to the question of contracts the New Brunswick Act.

Consolidated Bank of Canada v. *Henderson,* 29 U. C. C. P. 519.

There seems to be no English decision on this matter. That in the case put in the question the married woman was a party to the note as endorser and not as maker would not affect her liability. The strongest contention against the liability of the married woman in the present case would be that the fact she was an endorser would show that the contract was not "in respect to her separate property," but subsec. 3 of sec. 3 clearly disposes of any effect that contention might otherwise have.

Taking into consideration the United States and Ontario decisions under similar statutes on analogous points, and the tendency manifested by the New Brunswick courts in all cases in which the Act has been passed upon to interpret it broadly, there would seem to be no doubt of the married woman's liability under the above circumstances, in this Province.

If the wisdom of the French law be admitted, what is to be said of the Statutes of the Maritime Provinces?

NOTE.—In the Province of Quebec a wife cannot become a public trader without the authorization of her husband, express or implied.—C. C. Art. 179.

BANKS UNDER NO OBLIGATION TO GIVE REASON FOR REFUSAL TO HONOUR CHEQUE.

Question 149.—1. Bank A receives a cheque deposited to the credit of Smith & Jones, drawn on the bank B. The cheque is payable to Smith & Jones, and is endorsed "John Smith," one of the partners. In the usual way the cheque is presented to bank B, but returned through the clearing house—"Not endorsed." Bank A guarantees endorsement, but bank B refuses to accept the guarantee.

(*a*) Is "not endorsed" a proper answer on this cheque?

(*b*) Can bank B ignore A's guarantee?

(*c*) Does not the guarantee protect bank B from loss because of defective endorsement?

2. Can a bank return a cheque "present again," when there is not sufficient funds, or when the answer should be N.S.F.C.

Answer.—(*a*) Yes, though "not endorsed by payee" would probably be better.

(*b*) Yes, the paying bank is not bound to accept a guarantee.

(*c*) Probably it would, but as the payee bank is not bound to accept the general guarantee, it is within its rights in returning the item for proper endorsement.

2. Yes. A bank is not bound to give any reason for refusing a cheque, neither does the answer given impose any obligation on the holder to present again, and he would be justified in regarding the cheque as dishonoured, and at once taking any action open to him upon dishonour.

CHEQUE PAYABLE TO "SMITH AND JONES" ENDORSED "SMITH AND JONES, PER R. SMITH."

Question 150.—A gentleman came into the office, by the name of R. Smith. He presented a cheque payable to Smith and Jones. Cheque was endorsed "Smith and Jones, per

R. Smith." Smith has no power to sign for Jones, neither is the firm incorporated. Can Smith draw the money on this cheque legally?

Answer.—The right of Smith to endorse the name of "Smith and Jones" depends on a question of fact. If Smith and Jones are in partnership, as is implied by use of the word "firm" in the question, Smith has the right to endorse "Smith and Jones," and the bank should pay it, if otherwise payable. All that the bank would have to be satisfied with is: Is there a partnership "Smith and Jones" of which the Smith presenting the cheque is a member? Smith need not have endorsed "per R. Smith," although there is no objection to that, as the endorsement would be complete if he simply endorsed "Smith and Jones." Of course if there was no partnership, either general or in respect of the transaction out of which this cheque became payable, no endorsement could be made by Smith without specific authorization. See sub-section 2 of section 132, Bills of Exchange Act.

ENDORSEMENT IN PAYEE'S NAME WITHOUT AUTHORIZATION.

Question 151.—Jones and Brown trade and carry on business together, though no registered partnership exists, Jones attending to all the banking. Brown receives a cheque in payment of goods sold by him, the cheque being made payable to him personally. In the ordinary course of business, he hands the cheque over to Jones, but neglects to endorse it himself, which fact Jones fails to notice at the time. When bringing the cheque to the bank for deposit, the omission is discovered, and being short of funds, Jones endorses the bill "Brown, per Jones, Attorney," and then endorses the bill personally as usual. No written power of attorney from Brown to Jones exists, however.

I should like to know. (A) Whether a bill so endorsed should be received on deposit? (B) Whether such an endorsement can be defended? (C) Whether, if the manager of the bank, knowing all the facts of the case, decides to take the bill on deposit from the customer, endorsed as described, and authorized the teller to take it, the teller is thereby released from all responsibility as to the accuracy of the bill passing through his hands? (D) Whether in such a case, the teller should request the manager to initial the said bill, and if so, where the manager's initials should be placed; or whether the manager's verbal authorization would be sufficient? (E) Whether an endorsement of this kind, made in good faith, and without fraud, could be called a forgery or be contrary to the law?

Answer.—(A) We think the cheque which you describe should not be received. (B) This would depend on all the circumstances. (C) The acceptance of the cheque would be entirely a matter of the manager's discretion. (D) We should suppose it to be unnecessary for the teller to request the manager to initial the cheque, for if there was any dispute afterwards as to which officer of the bank was responsible for accepting the cheque, the true facts would not fail to be brought out. If initialed at all we think the proper place would be on the back under the endorsement. (E) An endorsement of this kind is not forgery; it is merely invalid for want of authority.

NON-TRADING PARTNERSHIP — INDIVIDUAL LIABILITY ON PAPER ENDORSED BY AND DISCOUNTED FOR THE FIRM.

Question 152.—Is it necessary that a firm of solicitors should sign and register a certificate of partnership such as is required in case of a trading partnership, in order to hold them jointly and severally liable on paper endorsed by them in the firm's name, and discounted for the firm? Does section 132 (2) Bills of Exchange Act, cover this point?

Answer.—The registration of such a certificate is not requisite, nor would it alone, we think, have the effect of making the partners jointly and severally liable. If they desire to come under such liability, the partners should each sign a declaration to that effect and lodge it with the bank, although such a declaration made in any public way would doubtless be binding.

Section 132 (2), which in effect makes one member of the partnership the agent of the others to bind them by use of the firm's signature, would, we think, apply only where one member can bind his partners. Ordinarily this is not true of non-trading partnerships, such as solicitors, architects, and the like, but even in their case if the transactions were clearly necessary in connection with the firm's business the partners might be bound, as, for instance, where a note is taken for solicitor's costs, and is discounted for the purpose of the firm.

Question (Submitted in continuation of the above).—As your meaning in first paragraph of answer is not clear to me, I will have to beg the favour of a further explanation. The case cited in my question is that of a firm of solicitors who are in the habit of discounting notes taken in payment of costs, just as a trading firm discounts notes taken for sales of goods. In second sentence of first paragraph you say: "If they desire to come under such liability, etc., they should sign a declaration to that," etc., and in second sentence of second paragraph you say, "if the transactions were clearly necessary the partners might be bound," etc. I should like to know beyond a doubt, if the partners are jointly and severally liable in the premises cited.

Answer.—We do not think you can be certain, as you say, "beyond a doubt" as to the liability of the parties, unless you have a clear proof that the partner signing had power from the others to make the firm liable for these obligations. *Prima facie* it would not, we think, be within the scope of the business of a firm of solicitors to discount paper, and the rule is that one partner binds the others only in connection with business within the scope of the partnership. Yet the question is one of fact, and if it were customary for the firm to discount paper, proof of such custom would bring the transaction within the scope of the business, and if it were proved that the firm got the benefit of the discount, as a firm, the other partners could not repudiate the liability, and at the same time retain the benefit.

CHEQUES IN FAVOUR OF MUNICIPALITIES OR INCORPORATED COMPANIES—NEGOTIABILITY.

Question 153.—Should a cheque payable to the order of a municipality or to a limited company be negotiated in any way except for credit of payee? Could it be endorsed over to a second party *by any one* or all of the signing officers of the corporation or company?

Answer.—There is nothing to prevent a cheque in favour of a municipality or a limited company being negotiated in the ordinary way, so long as it is properly endorsed by someone duly authorized to do so, but it is better practice to pass all such cheques to the credit of the account and allow the municipality or company to draw by cheque in the ordinary way for their needs.

DISHONOURED DRAFTS—SUIT BY DRAWER AGAINST ACCEPTOR —ENDORSEMENT OF PAYEE BANK "WITHOUT RECOURSE."

Question 154.—A drew a draft on B, which was payable to order of Bank of Nova Scotia, Kentville, N.S. B accepted it, but dishonoured the draft by non-payment at maturity. Without endorsing the draft, I handed it to a lawyer to sue. He returned it, demanding that we endorse it first, so that he could sue in A's name. Was it necessary for us to endorse it before he could bring action against B in A's name?

Answer.—If the draft was made payable to the bank merely for convenience of collection, it is possible A could sue in his own name upon the true situation being explained to the Court, but as B on payment is entitled to a proper discharge from the parties to the draft, the simplest course would be for the bank to endorse "without recourse."

NOTE DELIVERED WITHOUT ENDORSEMENT.

Question 155.—(1) Is the maker of a note which is overdue protected in the payment of the same, to any one presenting it, upon having note delivered up to him without the endorsement of the payee?

(2) Can such possessor of a note (the note not having been endorsed over to him by payee, he could not, I take it, be considered the holder in law), be he Tom, Dick or Harry,

enforce payment by suit against the maker without obtaining the payee's endorsement?

Answer.—The question involved in each case is whether the party in possession of the note is the owner of the claim which it represents. He might become so by an assignment as well as by endorsement, but unless he is able to show a good title to the note, he has no right to collect it or to sue the maker, and if, as a matter of fact, he has not a good title, the maker would not be protected against the true owner if he paid the note.

DISHONOURED NOTE — LIABILITY OF ACCOMMODATION ENDORSER TO PAYEE BANK.

Question 156.—An instrument in the following form is discounted by a bank: "$350 ......P. E. I. ...... 1917. Four months after date I promise to pay to the order of the Bank of ...., the sum of $350 at ...... for value received. Signed A. B." Endorsed A. J. C. In the event of dishonour what claim has the bank on A. J. C., the endorser?

Answer.—The endorser is liable for the amount of the instrument. See section 131 of the Bills of Exchange Act, which provides that "when a person signs a bill, otherwise than as an acceptor or drawer, he thereby incurs the liability of an endorser to a holder in due course, and is subject to all the provisions of this Act respecting endorsers."

CHEQUE PAYABLE TO A B ON THE ENDORSATION OF C D.

Question 157.—A cheque is made as follows: "Pay to A B upon the endorsation of C D." The cheque is endorsed "C D" only. Is the endorsement of A B necessary, and has the paying bank any right to refuse payment of the cheque, it being not endorsed by A B?

Answer.—Such a form of order in a cheque would be most unusual. The endorsement of both A B and C D should be required; otherwise the drawer should be asked for instructions.

NOTE ENDORSED BY B "WITHOUT RECOURSE" — SUIT BROUGHT IN NAME OF B BY SUBSEQUENT HOLDER.

Question 158.— A gives note to B, who endorses "without recourse" and passes same to C for value received. C sues in name of B without being a party to suit. Can B legally recover amount of note?

Answer.—B is not the holder of the note. Having endorsed without recourse, he is not liable upon it. He has no interest in it. He has not possession of it. The action brought by C in the name of B is wrongly constituted, and should not succeed.

CHEQUE RETURNED UNMARKED BY DRAWEE BANK, FOR PROPER ENDORSATION—FUNDS WITHDRAWN BEFORE RE-PRESENTMENT—LIABILITY OF THE BANK.

Question 159.—A cheque drawn on one of their country branches is received by one Toronto bank from another, through the clearing house. There are funds for the cheque when it reaches its destination, but on account of the endorsement being irregular, it is returned, and while it is in transit the drawer assigns (or withdraws the funds as the case may be). Is the endorsing bank released from liability because the cheque was not marked good?

Answer.—We think it was the duty of the country branch to have marked the cheque when presented before returning it to be endorsed, but we do not think that it was legally bound to do so, or that it can be made responsible for the withdrawal of the funds afterwards. It would follow, therefore, that the endorsing bank is not released.

ORDER OF ENDORSEMENTS ON PROMISSORY NOTE—ALL PARTIES EQUALLY LIABLE TO DISCOUNTING BANK.

Question 160.—A bank discounts a promissory note for its customers, Brown Brothers, drawn by J. Smith, to their order. Brown Brothers have apparently insisted upon an endorser to the note before accepting the same from Smith, as the note bears an endorsement " F. Gale," which appears above that of Brown Brothers. Should the bank discounting the note insist upon the payees' endorsement appearing above that of Gale, and, in the event of their not doing so, what is the position of the respective parties should the note be dishonoured at maturity?

Answer.—All the parties on the note are liable to the bank, so the bank has no interest in changing the order of endorsements.

RIGHTS OF ENDORSERS AMONG THEMSELVES.

Question 161.—AB sends CD a three months' note in settlement for an invoice of goods. CD, finding he cannot discount the note, returns it to AB, asking that another name be added in order that he may be able to negotiate it. AB gets EF to endorse the note, and returns it to CD, who endorses it beneath the signature of EF, and negotiates it. The note is dishonoured, and EF retires it after maturity. What is the position of CD and EF; who is the first endorser? If CD, then EF, as the subsequent endorser, must have the right to recover from him. Can CD set up that EF endorsed as security for AB; and if so, is it a good defence on the part of EF that he endorsed, at the request of AB, to enable CD to get the note discounted?

Answer.—The question involved here is entirely one of fact. If EF endorsed as surety for CD, the latter must protect him; if he endorsed as surety for AB, and to make AB's note more satisfactory to CD, EF has no recourse against CD. The order of the names is not material upon the true facts being shown.

ENDORSEMENT PLACED ABOVE SIGNATURE OF THE PRECEDING ENDORSER.

Question 162.—A signs a promissory note payable to B, B in order to get it discounted gets C to endorse. C's endorsement, however, is placed before B's on the note. Would C be liable to B as their endorsements stood?

Answer.—C would not be liable to B under such circumstances, no matter how the endorsements stood.

Sight Draft made Payable to the Order of a Bank and Discounted upon the Security of an Accommodation Endorsement.

Question 163.—A sight draft is made by "A" upon "B," drawn out payable to the order of ...... bank, and cashed upon the security of the endorsement of "C." Is there any question regarding the wording of the draft adversely affecting such security, and, if so, upon what grounds?

Answer.—We consider the endorser is a guarantor of payment, and that in case of dishonour he could be effectively sued.

Accommodating Endorsement on Bill Discounted by a Bank and made Payable to its Order—Right of Payee Bank to Recover from Endorser.

Question 164.—A. draws a bill to the order of a bank, and C. endorses it in order that A. may be able to negotiate it with the bank. The bank discounted the bill, which is dishonoured at maturity and duly protested.

(1) Can the bank recover from C.?

(2) Can the bank's endorsee recover from C.?

Answer.—The principle involved in this question is a very important one, and as it was presented to us by two or three correspondents we thought it best to obtain an opinion from Mr. Lash, which is as follows:

The impression derived from the various cases upon the subject, on a first reading, is that the cases are in conflict, and that the result of the whole is that the payee of a promissory note or the drawer of a bill of exchange cannot under any circumstances maintain an action against an endorser founded upon the instrument itself; but a more careful reading of the authorities will show that no such absolute rule can be deduced from them, and that, properly construed, the cases are not really in conflict, and that, although some remarks of some judges in some cases would appear to conflict with the decision in other cases, yet the decisions in all the cases and the principles embodied in those decisions are fairly reconcilable. The following rules or statements of the law are clearly laid down:

(1) That, in the absence of evidence to the contrary, the liabilities *inter se* of the maker and endorsers of a note, or the drawer, acceptor and endorsers of a bill, must be determined according to the ordinary principles of the law merchant, whereby the drawer and acceptor of a bill, or the maker and first endorser of a note, are liable to the subsequent endorsers.

(2) That the whole circumstances attendant upon the making, issue and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers, acceptors, drawers or endorsers, and reasonable inferences derived from these circumstances are admitted to the effect of qualifying, altering or even inverting the relative liabilities which the law merchant would otherwise assign to them.

(3) That the circumstances attendant upon the making, issue and transference of a bill or note may be shown in evidence for the purpose referred to, whether the action be upon the bill or note itself, or upon a collateral agreement between the parties.

Section 131 of the Bills of Exchange Act declares that "when a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an endorser to a holder in due course, and is subject to all the provisions of this Act respecting endorsers."

By section 186 it is provided that the provisions of the Act relating to bills of exchange apply with the necessary modifications to promissory notes, the maker of the note being deemed to correspond with the drawer of an accepted bill payable to the drawer's order.

By section 56 a holder in due course is defined to be a holder who has taken a bill, complete and regular on the face of it, under the following condition, viz.: (*a*) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; (*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

Sub-section (*g*) of section 2 of the Act declares that "The expression 'holder' means the payee or endorser of a bill or note who is in possession of it, or the bearer thereof."

Referring to the question asked, and assuming that the attendant circumstances were duly proven, and that the bank discounted the bill in due course, the answer is that the bank can recover from C. Assuming also that the bank's endorsee becomes a holder in due course, the answer is that he can recover from C. In order to make the bank's title or that of its endorsee technically regular, the bank, being named as payee of the bill, should endorse it without recourse, although it is by no means clear that this is necessary.

Under the attendant circumstances C. would be an endorser; the bank or its endorsee would be a holder in due course within the definition of section 2, sub-section (*g*), and section 56 of the Act; and under section 131 C, if not technically an endorser, would be liable as an endorser, and be subject to the provisions of the Act respecting endorsers.

Although, if the attendant circumstances be clearly shown, and the true relation to each other of the parties who put their signatures upon the bill be thereby ascertained, the payee would be entitled to recover against an endorser, yet the practice of discounting bills drawn like the one referred to in the question should be discouraged, as, owing to death, defective memory and false swearing and other reasons, it may not be possible for the bank to prove all the circumstances necessary to enable it to maintain the action, and before discounting a bill the bank should see that it is so drawn that if an action be brought upon it it will not be necessary to do more than prove the signatures so as to establish, *prima facie* at all events, the liability of the parties proceeded against.

For convenience of future reference the following cases are noted, all of which have been considered in connection with the foregoing: *Steele* v. *McKinlay,* L. R. 5 A. C. 754; *Wilkinson* v. *Unwin,* L. R. 7 Q. B. Div. 636; *McDonald* v. *Whitfield,* L. R. 8 A. C. 733; *Bishop* v. *Hayward,* 4 T. R. 470; *Wilders* v. *Stevens,* 15 M. & W. 208; *Smith* v. *Marsack,* 6 Q. B. Reports, 486; *Morris* v. *Walker,* 15 Q. B. Reports 589; *West* v. *Brown,* 3 U. C. Q. B. 290; *Ayr Plough Co.* v. *Wallace,* 21 S. C. R. 256; *Duthie* v. *Essery,* 22 Ont. A. R. 191; *Pegg* v. *Howlett,* 28 O. R. 473; *Robertson* v. *Davis,* 27 S. C. R. 571; *Wells* v. *McCarthy,* 10 Man. L. R. 639; *Watson* v. *Harvie,* 10 Man. L. R. 641.

NOTE.—Since this opinion was given the question at issue has been finally settled, so far as the Canadian courts are concerned, by the decision in *Robinson* v. *Mann,* 31 S. C. Can. 484 (1901), where it was held that the Molsons Bank were holders in due course of a note made payable to their order and which the defendant had endorsed above them, and that his endorsement was an "aval," a form of liability which the Bills of Exchange Act had adopted.

ACCOMMODATION ENDORSEMENT—LIABILITY OF ENDORSER TO PAYEE BANK WHICH HAS DISCOUNTED NOTE IN GOOD FAITH.

Question 165.—A note is made out payable to the order of the Bank of Nova Scotia and is endorsed by James Jones. Will not the note hold the endorser the same as if it were made payable to the order of James Jones?

Answer.—If A. B. presents to the Bank of Nova Scotia for discount his note in their favour, and endorsed by James Jones, and the bank discounts it in good faith, James Jones would be liable to the bank. It is, however, an undesirable form of note for a bank to take.

NOTE WITH ENDORSEMENT OF THIRD PARTY PLACED THEREON BEFORE ENDORSEMENT OF PAYEE — LIABILITY OF FORMER TO HOLDER IN DUE COURSE.

Question 166.—A promissory note has been endorsed by John Smith before John Brown, the payee, has endorsed it. Subsequently the payee endorses it. Can John Smith be made liable as an endorser or otherwise by a *bona fide* holder for value?

Answer.—Smith would be liable to a holder in due course. This point is substantially the same as that dealt with by the Ontario Court of Appeal in *Duthie* v. *Essery,* 22 Ont. A. R. 192 (1895), and in *Robinson* v. *Mann,* 31 S. C. Can. 484 (1901).

GUARANTEE WRITTEN UPON A BILL OR NOTE—NOTICE OF DISHONOUR.

Question 167.—A man writes and signs upon the back of a bill or note the following: "I hereby guarantee payment of the within." Is he entitled to notice of dishonour?

Answer.—We think not, and for the following reasons: The contract made is a contract of guarantee and not of endorsement, and to make a guarantor liable it is not necessary that he should receive notice of non-payment of the debt payment of which he guaranteed. The only doubt upon the subject arises under section 131 of the Bills of Exchange Act, 1890. That section is as follows: "When a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an endorser to a holder in due course, and is subject to all the provisions of this Act respecting endorsers." The words "and is subject to all the provisions of this Act respecting endorsers" do not appear in the English Act, and it may be contended that a person who signs a guarantee on a bill signs the bill otherwise than as a drawer or acceptor, and that, being subject to all the provisions of the Act respecting endorsers, he is entitled to notice of dishonour. We think, however, that a person who signs a guarantee on the back of a bill cannot be said to sign the bill within the meaning of section 131. He is not signing the bill; he is signing a special contract which he has written upon it. If every person who merely places his signature upon a bill signs it within the meaning of section 131, then a mere witness, described as such, would incur the liability of an endorser. This, of course, could not be so. The statute cannot mean that a person who signs his name on a bill, with an express statement of the contract which he intends thereby to make, or of the capacity in which he signs, becomes liable to any greater extent than the special contract of capacity calls for. If this were not so, then a person who upon a bill for $1,000, wrote and signed a guarantee to the extent of $100 only, would under section 131 become liable for the whole thousand, a *reductio ad absurdum.*

GUARANTEE WRITTEN UPON A NOTE—LIABILITY OF GUARANTOR.

Question 168.—(1) Could the amount of the subjoined note be collected from Jno. Smith, if at maturity Jno. Jones was unable to pay it?

(2) Could it be collected from Smith if he had simply written his name on the back without guaranteeing it?

(3) In question (2) would it make any difference if the proceeds of note had gone to Smith's credit, he having discounted it?

$100 Elmira, Ont., 2nd Jany., 1900.

Three months after date I promise to pay to the Federal Bank or order at the Federal Bank, here, the sum of one hundred dollars, value received.

Jno. Jones.

Endorsed.

For value received I hereby waive notice of protest of within note and guarantee payment of same.

John Smith.

Answer. As the law at present stands, Smith is not liable as endorser, and the fact that the proceeds of the note had gone to Smith's credit would not make any difference in this respect; but if it could be shown that the transaction was a loan to Smith on the security of the note, he would be liable, as borrower, to pay the loan, but not as endorser.

The question as to Smith's liability as guarantor is by no means easy to answer. The Statute of Frauds makes it necessary to the validity of a contract of guarantee that it should be in writing, signed by the guarantor or his authorized agent. The courts have held that under this statute all the essential parts of a contract must appear in writing. The contracting parties and the consideration are, of course, essential parts of every contract. In the case of a guarantee a subsequent statute provided that the consideration need not appear in the writing, but might be proved by other evidence, but it is still necessary that the contracting parties should appear. Assuming that both the face and the back of the note may be looked at for the purpose of showing the contract in writing, the question: with whom is the contract of guarantee made? appears to be left in doubt. "I hereby guarantee payment of the within note." To whom is payment guaranteed? It is not necessarily the Federal Bank, as the promise is to pay the Federal Bank or order, and the guarantee simply means that John Jones will pay the note in accordance with his promise. If the intention was to guarantee to the holder for the time being that the note would be paid, it can hardly be said that the parties to the contract appear in the writing.

Again, it might be quite consistent with the transaction that the guarantee was made with a third party who was interested in the payee of the note and who might have given him credit on the strength of the guarantee that Jones' note would be paid. The fact that the writing does not necessarily show the person with whom the contract of guarantee is made makes it necessary to give verbal evidence, and this is what the statute prevents being given.

On the whole we think that Smith could not be made liable on his guarantee; but, if the note were held by the Federal Bank when it matured, and if the contract of guarantee were really made with the bank, and if the bank brought the action upon it, it might possibly be held that, as the name of the bank appeared in the writing, the provisions of the statute had been sufficiently complied with.

NOTE TRANSFERRED BY PAYEE WITH THE ENDORSEMENT "I GUARANTEE PAYMENT OF THE WITHIN NOTE"—RIGHT OF THE HOLDER TO ENFORCE PROPER ENDORSEMENT.

Question 169.—A B transfers to C, for value, a note which is payable to his own order, endorsing it as follows: "I guarantee payment of the within note. A B." There is no other endorsement on the note.

Is this endorsement sufficient to transfer the note to C, and is A B in a position of an endorser requiring notification if the note is dishonoured, or is he a surety?

Answer.—In our opinion notice of dishonour is not requisite to retain his liability.

We do not think that the writing on the back of the note is technically an endorsement, or that it passes the title to the note. As C, however, has acquired it for value, he is entitled to a proper transfer, and can enforce the same by virtue of sec. 61 of the Act.

FORM OF BANK ENDORSEMENT STAMPS.

Question 170.—Two branches of the same bank use different endorsement stamps for cash items, collections, etc. One reads "Pay to the order of any bank or banker," and the other reads "Remitted for collection on account of ...... bank." Does it make any difference which of these forms is used. If so, which is the better?

Answer.—The endorsement stamp with the words "Pay to the order of any bank or banker," is preferable, and is the one more generally used in practice.

NON-TRADING PARTNERSHIP—LIABILITY OF PARTNERS ON NEGOTIABLE INSTRUMENTS.

Question 171.—To what extent are partners in a non-trading partnership liable to a bank:

1. In respect to an endorsement made by one member of the firm on a note given to them in settlement of an account for services, as for instance to solicitors.

2. When an endorsement is given for the accommodation of the maker of a note.

Answer.—As a non-trading partnership does not *prima facie* require to give promissory notes or accept bills, the making or acceptance by one partner in the name of the firm would not *prima facie* bind the partnership. Evidence of the actual transaction would be admissible, and if it were *de facto* a partnership transaction the firm would be bound. The endorsement of a bill or note payable to the order of a non-trading firm stands in a little different position. There is no *prima facie* presumption that a non-trading firm does not require to take a note or bill in settlement or payment of a debt due the firm, and if the firm's name were endorsed by one partner upon such a bill or note the endorsement would bind the firm if it were given in connection with a partnership transaction, but the firm would not be liable if the transaction were that of the individual partner only, unless *de facto* his authority as a partner extended to such a case. There are so many kinds of non-trading partnerships, that no general rule can be laid down as to what would and what would not be *prima facie* a partnership transaction. Much would depend upon the nature of the business and upon the course of dealing in the past, *e.g.*, if a non-trading firm kept a bank account and were in the habit of discounting bills and notes payable to the order of the firm, there could be no question that for the purposes of the bank the scope of that partnership would authorize one partner to endorse the firm's name on the paper discounted, but if one partner in a non-trading firm which *prima facie* did not require capital to carry on its business, and which did not keep a bank account, should open such an account and discount paper in the firm's name, and if it should turn out that the whole thing was a fraud on the partnership, and that the firm did not authorize the transaction or get the benefit of it, we think the bank would have great difficulty in collecting from the firm upon its endorsement.

2. In the second case, the firm would not be liable unless it could be shown that the partner making the endorsement had *de facto* authority to make it.

FAILURE OF CONSIDERATION FOR NOTE—DOES NOT AFFECT RIGHT OF HOLDER IN DUE COURSE TO ENFORCE PAYMENT.

Question 172.—An insurance agent discounts with a bank notes in payment of premiums on a policy which it turns out was, for some reason, not issued. The bank takes the notes in good faith, asking no questions, as the maker is undoubted for the amount involved. At maturity the maker refuses payment, saying he did not receive the policy, and therefore did not get "value" for his notes. Has the bank as holder in due course the right to enforce payment by law if necessary against the maker, and is not a person who gives notes bound to pay them when they come into the hands of a third party?

Answer.—If the bank discounted the notes before maturity and thus became the holder for valuable consideration and without notice of any defect, the maker has no defence. If the third party mentioned is a holder for valuable consideration before maturity and is at the time of his acquiring title without notice of any defect in title, the maker has no defence. See section 66, Bills of Exchange Act.

COLLATERAL SECURITY—RIGHTS OF HOLDER FOR VALUE.

Question 173.—A bank discounts for a customer his unsecured note for $1,000. Subsequently during the currency of this note the promissor hypothecates another party's note in his favour, as collateral security to his unsecured advance. Would the bank be considered a "holder for value" or would its title be subject to the equities between maker and endorser?

Answer.—The bank would be considered a holder for the value of the note hypothecated, up to the amount of $1,000, or any unpaid portion of it, and interest. (See sections 53 and 54 of the Bills of Exchange Act).

PRESENTATION FOR PAYMENT NOT EXCUSED BY REQUEST FROM DRAWEE TO RETURN THE BILL BEFORE MATURITY.

Question 174.—A has accepted a draft held for collection by Bank C, payable at Bank B, and the day before it falls due he instructs Bank C to return it to the drawers unpaid. Should Bank C present it at Bank B before returning?

Answer.—A's request should not excuse Bank C from duly presenting the bill on the day of maturity.

TIME AND DEMAND BILLS IN ENGLAND.

Question 175.—Please distinguish between an English time and demand bill of exchange. If a bill were sent to London office for collection, payable on demand in Edinburg, Scotland, would this be considered a demand or time bill?

Answer.—An English time bill is a bill drawn in terms calling for its payment otherwise than on demand, or at sight, which in Great Britain is the same thing. A bill such as that described would be a demand bill and be payable on presentation in Edinburg.

DAYS OF GRACE IN ENGLAND.

Question 176.—How many days of grace are allowed in England on bills drawn (a) at sight, (b) at three days' sight, (c) at sixty days' sight?

Answer.—A sight bill payable in England is not entitled to days of grace, but is payable on demand.

Bills drawn at three days or at sixty days' sight are entitled to three days' grace.

DAYS OF GRACE NOT ALLOWED ON DEMAND BILLS.

Question 177.—Under direction from the drawer in a distant town, a demand draft is presented through a branch bank upon a firm with instructions to obtain immediate payment. The drawees insist that they were entitled to one day's grace before paying. Is the firm entitled to any period of grace?

Answer.—No; a demand bill is payable on presentation.

BILL DRAWN "AT SIGHT," WITH ONE DAY'S GRACE.

Question 178.—A draft is drawn from one of the States in the United States where days of grace have been abolished, on a party in Canada. It reads, "At sight with one day's grace, pay," etc. How should this due date be calculated?

Answer.—The draft is payable on the day after acceptance. Section 42 of the Bills of Exchange Act fixes the days of grace to be allowed "where the bill itself does not otherwise provide," leaving other cases to be fixed by the terms of the bill. The fact that it is drawn from a place where there are no days of grace does not affect the matter in any way.

LIEN NOTES NOT NEGOTIABLE AND THEREFORE NOT SUBJECT TO DAYS OF GRACE.

Question 179.—Are there three days of grace on a lien note, (a) when left for collection or as collateral security; (b) when discounted. If a lien note is discounted, does it require a stamp? Can a lien note be protested if three days of grace are added?

Answer.—(a) No. (b) No.

The following ruling was given by the Finance Department over a year ago:

"We think it may be said generally of these lien notes that they begin with this language, 'on or before the ...... day ...... I promise,' etc. In addition there are several contingencies provided for in these instruments which may or may not happen. If any one of these contingencies does come to pass, the amount of the instrument becomes immediately due.

"It may, therefore, be said that instruments embodying these conditions are not payable on demand or at a determinable future time and in consequence are not negotiable paper. These instruments, therefore, are not promissory notes within the meaning of the Act, and as such need not be stamped."

As the ordinary lien note is not a note within the meaning of the Bills of Exchange Act, protest is unnecessary.

ALTERATION OF DATE OF MATURITY—DAYS OF GRACE.

Question 180.—A bill dated October 1st, payable 30 days after date, is, with the consent of all parties, accepted by the drawee as payable November 15th. Does the acceptance carry three days of grace, making the bill due November 18th?

Answer.—Yes. November 15th is under such conditions the "time of payment fixed by the bill," and the acceptor is entitled to three days' grace (Bills of Exchange Act, sec. 42).

NOTE ISSUED ON JUNE 30TH "AT ONE MONTH"—DATE OF MATURITY.

Question 181.—A note is drawn June 30th, at one month. Allowing three days' grace will date of maturity fall on August 2nd or August 3rd?

Answer.—August 2nd. The month is a calendar month, *i.e.*, from any day in one month to the same day in the next month. The note described would, therefore, be payable on August 2nd. (See section 46, Bills of Exchange Act).

BILLS OF EXCHANGE ACT—WHAT IS MEANT BY "THE TIME OF PAYMENT."

Question 182.—A by-law of a municipal corporation authorizes borrowings from the bank repayable on or before 15th December. The note tendered is made payable on 15th December. With the three days' grace this makes the amount payable on 18th December. If we discount the note can the loan be said to be made strictly within the terms of the by-law?

Answer.—If the by-law provides that a note shall be given for the amount borrowed thereunder, payable on or before 15th December, we think a note payable on 15th December is in order. The Bills of Exchange Act would recognize that as "the time of payment" fixed by the note, while making it "due and payable" on the 18th December.

We are in any case of opinion that the irregularity, if one can be said to exist, would not invalidate the lender's claim.

NOTE PAYABLE AT PAYEE'S OFFICE—DEATH OF PAYEE.

Question 183.—A note is made to read as follows: "I promise to pay AB or order at his office, etc." AB endorses the note and has it discounted. Before it is due AB dies and his office is closed up. Where must the note be presented for payment in order to hold AB's estate on his endorsement?

Answer.—The note must be presented at AB's former office, and if refused or there is no one there to answer, it should be protested. See sections 88 and 89.

NOTE PAYABLE AT A BRANCH BANK—BRANCH CLOSED AND BUSINESS TRANSFERRED ELSEWHERE—PRESENTMENT.

Question 184.—A note is payable at a branch of a bank at A., but after the making and before it is due, the branch at A. is closed and the books and business are transferred to B., at the branch of the same bank there, and the makers and endorsers know this. Presentation is made at the branch at B., and not to the makers and endorsers personally. Is this good, and, if so, how should notice of dishonour be worded to suit change?

Answer.—Such a presentation is not good.

LEGAL BANK HOLIDAYS.

Question 185.—What holidays may a bank observe? In the case of a civic holiday, where all the banks in the place, finding by 12 o'clock that the bills they hold have all been arranged for, close their offices at that hour, what is the result if some private holder of a bill due that day, or of a cheque, presents the same after the bank is closed, and it is thereby dishonoured?

Answer.—Banks in Canada may legally observe any holiday they choose to keep, provided that in closing up their offices they are not breaking their contract with their customers, which may be either expressed or implied. A bank which opens a current account in effect agrees with the customer that it will be ready to honour his cheques if presented within the ordinary business hours recognized among bankers. If it should without notice decide not to open or not to keep open the office on any particular business day, and the customer's cheque should thereby be dishonoured, we think it would be liable to him for damages.

The existing practice among bankers, of keeping someone in the office on holidays which are not statutory holidays, to answer demands such as the above, seems to imply an understanding on this point which amounts to a contract, but this may be modified, on reasonable notice, to any degree. We would think it reasonable that banks, in common with their neighbours, should keep the local holidays, and that it should be understood that as soon as all notes and acceptances due have been arranged, the offices will be closed for the day. The closing of the offices on any day after reasonable notice involves no responsibility.

BILL DRAWN PAYABLE AT ONE BANK, AND ACCEPTED PAYABLE AT ANOTHER.

Question 186.—A draft drawn as follows: "Pay to the order of myself at the Canadian Bank of Commerce, Montreal," is sent to the Merchants Bank of Canada, Montreal, for collection, and accepted payable at the latter bank. Where should the draft be presented when due? Should the latter pay it, seeing that there may be doubt as to where it is really payable?

Answer.—Section 88 (a) declares that where a place of payment is specified in the bill or acceptance, and the bill is there presented, such presentment is properly made. The provisions in the Act were evidently intended to legalize the previously existing practice of naming the place of payment in the acceptance, and not in the body of the bill (a practice of unquestioned convenience), and there has been no case before the courts since, where a different place of payment has been named in each. As the cases must be rare we should think it best to present such acceptances at both places named and so avoid all doubt.

There is, we think, no question of the right of the bank at which the acceptor has domiciled the bill to pay it on his behalf if this payment is otherwise in order. In doing so it is acting on the acceptor's authority.

PRESENTATION OF A CHEQUE FOR PAYMENT—DUE DILIGENCE.

Question 187.—A suburban office of a city bank (or a bank not a member of the clearing house) receives a cheque from a customer on Saturday at ten o'clock a.m., hands the same to its city office (or its clearing bank) on Monday, and such city office (or clearing bank) presents it for payment on Tuesday through the clearing house. Was the said cheque in your opinion presented for payment within a reasonable time within the meaning of the Bills of Exchange Act?

Answer.—We think so. The question is to be determined by the nature of the instrument, the usage of trade, and the facts of the particular case, section 86 (2). It is customary for persons receiving cheques to deposit them with their bankers, for such bankers to forward them to their correspondents for collection, when they are not drawn on banks with which they make direct exchanges, and for the correspondents to present them for payment through the clearing house or otherwise on the following day. If such a mode of collection is admitted to be reasonable, and each party negotiates or forwards the cheque within twenty-four hours after it is received by him, the procedure is clearly in order. The Act contemplates a negotiation of cheques, which might delay their presentment without necessarily discharging the endorser. (See section 70 (2-3), and compare section 77 as to sight bills).

ACCEPTANCES DOMICILED AT THE ACCEPTOR'S BANKERS—RIGHTS AND DUTY OF THE BANKER ON PRESENTATION FOR PAYMENT.

Question 188.—A. deposits with a bank a sum of money in open account, upon which he from time to time issues cheques. At length, however, he accepts a draft, making it payable at the bank where his funds are. When the bill falls due and is presented at the bank for payment, is the bank bound to pay for it, the acceptor's account being in funds but no authority having been given the bank to charge acceptance to his account?

Answer.—In *Bank of England* v. *Vagliano* (1891), A. C. 107, the judgment of Macnaghten, L.J., contains the following statement of the law in the matter:

"The relation of banker and customer does not of itself, "and apart from other circumstances, impose upon a banker "the duty of paying his customer's acceptances.

"If authority is wanted for this proposition it will be "found in *Robarts* v. *Tucker* (1851), 16 Q. B. 560, where "it was said by the court that 'if bankers wish to avoid the "'responsibility of deciding on the genuineness of endorse-"'ment, they may require their customers to domicile their "'bills at their own office, and to honour them by giving a "'cheque upon the banker.' That implies that bankers may "refuse to pay their customer's acceptance, and that such "refusal is not inconsistent with the relation of banker and "customer, or a breach of the banker's duty to his customer."

"If a banker undertakes the duty of paying his customer's "acceptances, the arrangement is the result of some special "agreement, expressed or implied."

The answer to the question would therefore be that in the absence of special circumstances governing the case, the bank would not be bound to pay its customer's acceptance in the case mentioned, but it would be entitled, having paid it, to charge the amount to his account.

ACCEPTANCES PAYABLE AT A BANK—RIGHT TO CHARGE TO CUSTOMER'S ACCOUNT AT MATURITY.

Question 189.—Has a bank a right, without special instructions, to charge to the customer's account at maturity, a note or acceptance which he has made payable at the bank? Is such a note or acceptance to be regarded as an order on the bank to pay the same?

(2) Would your answer apply to past due notes or acceptances?

Answer.—A customer who makes his acceptances payable at a bank thereby authorizes the bank to pay the same at maturity, but it is clear that such an acceptance only gives authority to pay, and does not impose a duty.

Duty to pay a customer's acceptance for which sufficient funds are not at hand might, however, arise out of the course of dealing between him and the bank.

(2) The bank should not pay an overdue acceptance without instruction from the acceptor. His relations to the other parties on the bill may be completely changed by its being overdue.

(NOTE.—It has been said that in the Province of Quebec a customer's note cannot be charged to his account except with his special authority, and above answer is without reference to that province).

PAYMENT BY A BANK OF A BILL ON A CUSTOMER NOT ACCEPTED BY HIM.

Question 190.—A bank has authority to pay the acceptances of a customer, and through an error has marked and paid a draft on him which had never been accepted. Has it any recourse, or must it abide by its error?

Would *Steele* v. *McKinlay* (1880) L. R. 5 App. Cas. 754 apply?

Answer.—Where a bank has voluntarily made a payment on behalf of a customer we are of opinion that, unless there is some special reason to the contrary, they cannot get back the money from the party to whom it was paid, although we think they could in this case have corrected their error if the draft had been only marked good and not paid. The customer could ratify their act, but if he refused to treat the payment as properly made on his behalf the bank is left to any equitable rights it may have.

It seems to us, however, that the error should not necessarily involve a loss. Either the bill is drawn for an amount which the customer owes, in which case the paying bank might get an assignment of the drawer's claim on the drawee, or the latter might very properly ratify the payment; or it is a bill the payment of which by the drawee would entitle him to claim back on the drawer in whole or in part, in which event there should be some arrangement possible between the drawee and the bank which would protect the latter.

Steele v. *McKinlay* does not help the matter.

BILL ACCEPTED BY TWO DRAWEES—RIGHT OF THE BANK AT WHICH THE BILL IS DOMICILED TO CHARGE IT TO THE ACCOUNT OF ONE OF THE ACCEPTORS.

Question 191.—A bill drawn on and accepted by two drawees is made payable at a bank. Is the bank authorized at the maturity of the bill to pay it and charge it to one of the two acceptors?

Answer.—The bank has clearly no authority (in the absence of some special agreement) to pay such an acceptance and charge it to one of the acceptors. We also think that if the bank had become the owner of the bill before maturity, and held it when it fell due, it would not (in the absence of agreement) have the right to set off the amount against one of the acceptors. "Set-off" must not be confounded with "counterclaim." If the acceptor, having a balance to his credit, should sue the bank therefor, the bank might counterclaim in the action against him and the other acceptor for the amount of the bill, and thus practically obtain payment in this way—but this depends not upon the law of set-off, but upon the practice of the court, and in some countries "counterclaim" is not allowed — the defendant must bring a cross action.

DRAFT—"NO PROTEST FOR NON-ACCEPTANCE." RETURN OF BILL DISHONOURED ON DAY FOLLOWING MATURITY.

Question 192.—A draft sent by Bank A to Bank B for collection with instructions—"No protest for non-acceptance" attached, was returned by Bank B to Bank A on the first business day after the maturity of the bill unprotested. Can the drawer of the bill decline to take it up on his being requested to do so by Bank A? If not, can Bank A hold Bank B liable for the amount? Under section 99, Bills of Exchange Act, is not the return of the bill unpaid a good notice of dishonour?

The bill in question bore only the endorsement of the drawer, he having made it payable to his own order.

Answer.—As the return within the proper time of the dishonoured bill was in point of fact notice of dishonour, we do not think Bank A can refuse to take it back, and if they notify their customer within the proper time of the dishonour, either by a formal notice to that effect or by sending him the dishonoured bill, he is liable.

The rights of the parties are not affected by the fact that there is no endorsement other than that of the drawer. If Bank A's customer had been an endorser and not the drawer, he would in turn have the same right to pass on the bill to the drawer.

INSANITY OF CUSTOMER—CHARGING OF ACCEPTANCES.

Question 193.—A customer of a bank, who has become insane, has a balance at his credit. Before becoming insane he accepted drafts payable at the bank. The manager of the bank knows that the customer has been placed in an asylum, but has not been notified by anyone of his insanity. Would the bank be safe under such circumstances, in charging the acceptances to the customer's account?

Answer.—The insanity of the customer, to the knowledge of the bank, has the effect of revoking this authority, and the bank would not be justified in paying the acceptances. That the bank has not been officially notified of the customer's insanity does not signify; the fact that it is known to them is sufficient.

DISHONOURED CHEQUE—ACCEPTANCE OF TENDER OF PAYMENT AFTER BANKING HOURS.

Question 194.—A cheque drawn on Bank A. by B. is forwarded for collection by Bank C. to Bank D. A. refuses the cheque, "N. S. F.," but B. tenders payment during the day or after three o'clock to D. Does D. incur any liability and, if so, what and to whom, in accepting payment, stamping it paid and delivering it to B. or his properly accredited representative? Apart from its legal aspect, is it not possible that such action on the part of D. would be regarded as an unfriendly act by A.?

Answer.—Bank D.'s acceptance of payment would be in the interest of all parties concerned, and we can see no ground for its being regarded by Bank A. as unfriendly, especially if the settlement was tendered after three o'clock. The drawer might have deposited to cover and requested Bank D. to present again, but D. would be under no obligation to do that, even if requested by Bank A. as well as by the drawer.

BILL ACCEPTED PAYABLE AT A BANK WHERE THE DRAWEE HAS NO ACCOUNT.

Question 195.—May a bank refuse to take money with which to pay a draft held by another party, from the drawee of the same, the draft having been accepted by him payable at the bank? He has no current account with them.

Answer.—The bank is quite at liberty to refuse to take money from anyone not a customer with which to retire a note domiciled by him at the bank. No person can be forced to act as agent for another against his will.

PARTIAL PAYMENT OF A BILL—SHOULD A BANK ACCEPT?

Question 196.—Is there any law relating to part payment of a bill (by promissor or acceptor or his agent) held by a collecting agent? A case came to my notice where a part payment was left with a bank to apply on a bill payable there, but held by another bank. The bill was duly presented, and the part payment left by the acceptor was offered to the collecting bank and refused by them. The bill was protested and returned for non-payment, and the money intended as a part payment returned to the acceptor. What I would like to know is if the bank did right, according to the law, in refusing to accept a part payment, endorsing it on the bill, protesting (if necessary), and returning the bill along with the remittance: This latter is the course I should think to be the best business, but I have been unable to find a law covering the point.

Answer.—There is no direct statute that we know of relating to partial payment of a bill. It is established, however, that the holder may accept partial payment without in any way affecting his claim on the drawer or endorser for the balance, provided he does nothing otherwise that would release him, but he is quite free to refuse to accept anything but payment of the whole amount of the bill, and this appears to be the English practice. We think, however, that the plan suggested is quite permissible, namely, to take the money tendered, if offered strictly as a partial payment, and then protest the bill so as to retain recourse against the other parties to it—indeed under some circumstances any other course might be prejudicial to the interests of the owner of the collection.

RIGHTS OF THE HOLDER OF A CHEQUE AGAINST THE DRAWEE BANK.

Question 197.—In your reply to Question 196, you say that the acceptance by the banks of the cheques for part of their amount would as a practice be open to objection. Would you kindly state the principal objection?

(2) You also imply that to give the holder a right to demand payment of part of the cheque when there were insufficient funds for the whole "would involve serious consequences." In "Girouard's Bills of Exchange Act, 1890,"

p. 260, the case of *Gore Bank* v. *Royal Canadian Bank*, is quoted: "If a bank refuse to pay a cheque, having sufficient funds of the drawer for the purpose, the holder can compel payment in equity." If this rule holds good it might be in the interest of all to extend it to a case of "insufficient funds."

Answer.—(1) The chief objection is the trouble and risk of error involved, for which the trifling profit derived from the class of accounts where such things might happen would never pay.

(2) The remark cited is contrary to the well-recognized rule, that until a cheque has been accepted the holder is not in privity with the bank, and no one can proceed against it in connection with the cheque except the drawer. It had nothing to do with the merits of the case, but was a mere passing remark.

As to the consequences of a change in the law, the following among other considerations may be mentioned:

If the holder had a right to demand payment it would involve a duty on the part of the bank to pay on his demand if it held funds, and a consequent responsibility to him for any error in refusing payment. At present, whether the bank pays a cheque or refuses it, if it refuses one cheque and immediately afterwards pays another, if it overlooks a credit, or charges the customer with a wrong debit, the matter is one which affects only the bank and the customer, and a reasonable and friendly settlement of any mistake is in practically every case assured. It needs little imagination to forecast the difficulties that would arise if the bank had to reckon with a holder who was (or thought he was) unjustly treated. To give such a right to holders of cheques for which there are insufficient funds is open to other practical objections, such as the labour and risk of error it would involve, and the endless disputes which might be expected to result.

NEGLECT TO PRESENT NOTE AT MATURITY DOES NOT DISCHARGE MAKER.

Question 198.—(a) A customer of bank X takes a note from B. made payable at bank X, but does not leave it for collection. On due date promissor calls at bank to pay note and is told it is not there. Does this have any bearing on promissor's obligation to pay after due date?

Answer.—(a) Omission to present the note at maturity at the place where it is payable does not discharge the maker, but, payment having been tendered there, interest would cease to accrue and in any suit commenced against him before actual presentment was made costs would be at the discretion of the Court. It has been held that it is the maker's duty to have the payment at the place of domicile when the note matures and, if the note is not there, to leave the payment there to await presentation.

NOTE CROSSED "GIVEN FOR A PATENT RIGHT" AND PAYABLE AT THE OFFICE OF MAKER'S BANKERS.

Question 199.—Is a bank justified in charging to a customer's account a note of that customer which is crossed "given for a patent right," and is made payable at such bank; or would the bank incur liability in refusing payment of such a note, there being sufficient funds at the customer's credit at the time the note was presented?

Answer.—The bank would be perfectly justified in paying the note, but would not be bound to do so as between itself and customer, and would incur no liability in refusing to pay it.

CHEQUE OR ACCEPTANCE SIGNED FOR A FIRM BY AN ATTORNEY, PRESENTED AFTER THE ATTORNEY'S DEATH.

Question 200.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death?

Answer.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

DEMAND BILL PRESENTED FOR PAYMENT THREE DAYS AFTER ACCEPTANCE.

Question 201.—(1) Is a bank justified in paying an acceptance drawn "on demand" and accepted payable at the bank and dated a certain day—if same is presented two or three days after the date of its acceptance?

(2) Is a demand draft of the nature of a cheque after it is accepted, or does it become past due if not presented where it is payable, on the day the acceptance is dated?

Answer.—(1) We think a bank is justified in paying on behalf of a customer a demand bill which he has accepted payable at the bank, if presented two or three days after the date of his acceptance.

(2) We do not think a demand draft is of the nature of a cheque after its acceptance. Section 86 (b) of the Bills of Exchange Act indicates that if not presented within "a reasonable time" it must be regarded as an overdue bill. We do not think that this would necessarily involve that the bank should refuse to pay it if presented after a reasonable time had elapsed, but it would be more prudent to ask instructions from its customer before doing so.

The same question might arise in the case of an overdue acceptance not payable on demand. The fact that it is overdue does not lessen the liability of the acceptor to pay, and we should suppose that the bank to which it was presented would be entitled to pay and charge the item to his account, but it would be the more prudent course to refer such bills to the acceptor first, as he might have some defence or offset available against an overdue bill.

ACCEPTANCE PRESENTED FOR PAYMENT AT BANK AFTER MATURITY.

Question 202.—Is it proper for the bank to pay a customer's acceptance after maturity, assuming that it has funds at the customer's credit, that the acceptance is in order, and that it has been made payable at the bank?

Answer.—We think that the bank should ask its customer for instructions before payment. The bill being overdue, his position with respect to the holder of the bill is altered, and his rights might be injured if the bank should intervene and pay.

DRAFT NOT PRESENTED BY COLLECTING AGENTS ON DATE OF MATURITY.

Question 203.—Brown & Co., of Montreal, make a draft on Jones, of Hamilton, through the "A" Bank. The latter send it to their agents, the "B" Bank in Hamilton, for collection, and it is accepted in the usual course. Through an oversight on the part of the "B" Bank the draft is not presented for payment until fifteen days after the due date. Five days after its maturity Jones absconds. The "A" Bank now apply to the "B" Bank for payment on behalf of their customers, Brown & Co. "B" Bank refuse, claiming that "A" Bank should have asked for the draft. Who is responsible?

Answer.—We do not think there is the slightest doubt that the collecting bank must bear the loss. If the item had been marked "no protest," the position would be otherwise. In the instance which is now submitted apparently the duty of the collecting bank was to give notice of dishonour in case of non-payment. As they failed to do so, the drawers of the draft are discharged, and the bank in Montreal has a right to look to the collecting bank for protection.

CHEQUE—DELAY IN PRESENTMENT FOR PAYMENT. RECOURSE AGAINST THE DRAWER.

Question 204.—A gets B to give him his cheque on bank Y for $500. He asks bank Z in the same town to cash it and hold it for a week without presenting, at the end of which, he, A, will take it up. If he fails to do so and the cheque is refused, would bank Z have a valid claim on B (a) if the cheque were dishonoured for want of funds, (b) if B had countermanded payment?

Is B responsible to a holder for value, until discharged by the Statute of Limitations, notwithstanding any delay in presentation which does not cause him actual damage?

Answer.—We think the drawer of the cheque is liable notwithstanding the non-presentation of the cheque for payment, until relieved by the Statute of Limitations; unless he suffers actual damage through delay.

DRAFT LOST BY PERSON WITH WHOM IT WAS LEFT FOR ACCEPTANCE—POSITION OF PRESENTING BANK.

Question 205.—Bank A received a sight draft from bank B drawn on C who are customers of bank A. Bank A presents the draft and after seventeen days outstanding C claims draft is lost. Can bank B recover from bank A for amount of draft?

Answer.—No, if the draft being unaccepted forty-eight hours after presentation, bank A immediately gave notice to bank B of this and of its inability to obtain the return of the draft, as soon as that inability became known to it. Otherwise, bank A is liable.

DEMAND NOTE WITH AN ENDORSER, HELD AS COLLATERAL SECURITY—PRESENTATION FOR PAYMENT.

Question 206.—Under section 181 of Bills of Exchange Act it is provided that where a note payable on demand has been endorsed, and with the assent of the endorser delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as security. Must this assent be in writing, or may it be by verbal understanding?

Answer.—The assent may be written or verbal, but the latter would be open to practical objections in cases where the facts admitted of difference of opinion or dispute.

DEMAND NOTE, BEARING ENDORSEMENT, GIVEN AS COLLATERAL SECURITY—PRESCRIPTION.

Question 207.—A demand note is endorsed and given as collateral security. Is there a prescription of time on that note, the note not bearing interest on its face?

Answer.—Section 181 of the Bills of Exchange Act, which is as follows, governs: "If a promissory note payable on demand, which has been endorsed, is not presented for payment within a reasonable time, the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as such security."

DEATH OF A CUSTOMER—WHAT CONSTITUTES NOTICE.

Question 208.—If mention of the death of a customer appears in the daily papers, would this in itself constitute notice under sec. 167 of the Bills of Exchange Act? If the notice had not been observed by the bank, would it be affected thereby?

Answer.—If the information in the newspapers were true, and it came within the knowledge of the bank, it would no doubt be notice of the customer's death, and the bank would be bound not to pay the customer's cheques presented thereafter. The bank would not be bound by any information in the newspapers which had not come under its actual notice.

NOTICE OF CUSTOMER'S DEATH.

Question 209.—Re sec. 167, Bills of Exchange Act: (1) What constitutes notice of a customer's death? (2) Would a bank be justified in refusing payment on the strength of one of its officers having heard of a customer's death?

Answer.—(1) Any information received by the bank from which the death of the customer may be fairly inferred, must be held to constitute notice of his death.

(2) Generally speaking, any information received by an officer of the bank which is within the condition would not only justify the refusal of the cheque, but would put on the bank the burden of paying the cheque, if paid, at its own peril; *i.e.*, if it should prove that the information is correct the bank would not have the right to charge the cheque to the customer's account.

Whether information which has reached any officer of the bank is to be regarded as knowledge on the part of the bank, would depend somewhat on the circumstances, the position of the officer, etc.

DEATH OF CUSTOMER—CHEQUE PAID AFTER DEATH BUT BEFORE NOTICE.

Question 210.—Can a bank be held responsible for paying a cheque after maker's death, but before such news is known to its officers?

Answer.—No.

DEATH OF CUSTOMER—PAYMENT OF CHEQUE CERTIFIED BEFORE NOTICE OF DEATH.

Question 211.—" A " Bank presents a cheque drawn on " B " Bank which " B " Bank initials " O.K." by the ledger keeper. " A " Bank deposits the cheque in the usual way through the clearing house but " B " Bank refuses payment, stating that the drawer is dead and that the cheque was marked " O.K." by the ledger keeper without the knowledge of the manager. Has " B " Bank the right under these circumstances to refuse payment?

Answer.—If the marking on the cheque was in accord with the usual practice of the bank the fact that it was marked by the ledger-keeper without the knowledge of the manager is immaterial and the marking must be taken to amount to certification by the bank. The cheque was practically paid when it was thus certified, and if the bank had no knowledge of the death of their customer when it was presented for certification, the entry made to his account was in order.

RIGHT OF A BANK TO HOLD BALANCE AT CREDIT OF A CUSTOMER'S ACCOUNT AS SECURITY FOR AN UNMATURED NOTE.

Question 212.—A bank discounts a note with its customer's endorsement. Before the note matures the customer dies. Has the bank the right to hold back sufficient money of any balance deceased may have had at credit, as security until the note matures, it having good reason to suppose that the maker of the note cannot pay same?

Answer.—Until the note has matured the bank has no claim against the customer's estate which it would have a right to enforce. It cannot hold back any balance at his credit.

INSUFFICIENT FUNDS FOR A CHEQUE—CAN AMOUNT TO CREDIT OF DRAWER'S ACCOUNT BE APPLIED IN PARTIAL PAYMENT?

Question 213.—A has a cheque for $80, signed by B, on our savings department, but B has only $40 to his credit; is the bank justified to pay to A the balance remaining to B's account without any notice? What would you think of a debit slip on B's account to withdraw the balance remaining to his credit, and apply that amount as a partial payment on the back of the cheque?

Answer.—The bank should refuse payment—"Not sufficient funds."

INSUFFICIENT FUNDS FOR A CHEQUE—HOLDER CANNOT DEMAND PARTIAL PAYMENT.

Question 214.—Would you think it well to amend the law so as to give to the holder of a cheque for which there are not sufficient funds, a right to receive whatever amount there may be at credit of account?

Answer.—As far as the interests of the banks are concerned we think that any legislation giving the holder of an unaccepted cheque rights against the bank would be highly undesirable. At present banks are responsible only to their own customers for what they do, or omit to do, in respect to any unaccepted cheque, and to alter this position would involve serious consequences.

LOST DRAFTS—SECURITY REQUIRED BEFORE ISSUE OF DUPLICATE.

Question 215. A purchases from a bank at Toronto a draft on its Montreal office, which is lost in the mails. A asks the bank for a duplicate draft, offering to give them a bond of indemnity, signed by himself and the payee, for twice the amount of the draft, but the bank insists upon having another substantial name. Are they legally entitled to demand this?

Answer.—We think that they are entirely within their rights. A mere release of the rights of the purchaser of the draft and of the payee does not help the matter, nor justify the acceptance of a bond of indemnity from them, which the bank does not regard as financially sufficient. The point is that if the draft in question has been received by the payee and endorsed by him, a holder in due course has an unquestionable right to collect the amount from the bank; and besides, if the payee were not honest, he could, even after giving the indemnity and procuring a duplicate, endorse the original if it afterwards reached his hands, and it might become a valid claim in the hands of a third party. In the view of the responsibility of the bank on the draft itself their request is quite reasonable.

DELAY IN MAIL — CHEQUE RETURNED DISHONOURED — RESPONSIBILITY.

Question 216.—A cheque on a suburban branch is sent through the clearing to the main office of the drawee bank and mailed to the branch the same night. Through a post office error the letter is sent to another town and is not received by the branch for five days. The cheque is returned dishonoured to the bank which originally cashed it, but that bank refused to accept it although notified that the letter containing it had gone astray. Who must bear the loss, the post office, the main office of the bank through which the cheque was cleared, or the bank which cashed it originally?

Answer.—Section 91 of the Bills of Exchange Act excuses delay in making presentment for payment when the delay is caused by circumstances beyond the control of the holder and the error in the post office would come within that category. The loss would require to be borne by the bank which originally cashed the cheque. The other banks were merely their agents for collection and appear to have followed the usual procedure and to have exercised ordinary care and diligence, which is all they are required to do.

Endorsed Note Lost in the Mails and not Presented for Payment on Date of Maturity.

Question 217.—A customer deposits with the bank a note for collection, on which there is a good endorser. The note is payable at a distant point, and when deposited for collection has still two months to run. The bank forwards it at once to its agents for collection, but on enquiry ten days after maturity of the note they find that their letter has never been received. The makers of the note are worthless. Was not the endorser discharged for want of notice, and would not the bank be responsible for neglect in not looking for an acknowledgment of the letter?

Answer.—Section 91 of the Bills of Exchange Act excuses delay in presentation when "caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence." We think that the bank's neglect to see that the letter was acknowledged was not negligence within this section, and that the delay was beyond its control. There appear to be no English cases covering the point, but there are some American cases in which it was held that delay in the post office when a bill is mailed in good time, is a valid excuse for delay in presentation.

Payment of Original Draft, Accounted Lost, After Duplicate has been Paid.

Question 218.—"A" who resides in Montreal buys a sola draft from his bankers on their Toronto branch, payable to "B" or order, and the draft was lost. The bank gives "A" a duplicate, which was duly paid in Toronto. If the original is subsequently presented for payment by an innocent holder would the bank be compelled to pay it?

Answer.—If the original draft reaches the bank properly endorsed it has to be paid. The circumstances call for a satisfactory indemnity before the duplicate is issued.

CERTIFIED CHEQUE LOST IN MAILS—BANK ENTITLED TO BOND OF INDEMNITY BEFORE PAYMENT OF DUPLICATE.

Question 219.—A municipal corporation issues a cheque payable to the order of "Good Roads Commission," and the cheque is marked "accepted" by the bankers of the municipality. The cheque was lost in the mails. The municipal corporation wish to issue a duplicate and ask the "Good Roads Commission" for a bond of indemnity, which is refused on the ground that the original cheque had not been received. Would it be sufficient for the municipality to give the bank accepting the cheque a "stop payment" of the lost cheque and then issue a duplicate? Could the bank properly ask for a bond of indemnity from the municipality before paying the duplicate if the duplicate is not to be charged to the municipality? Could the municipal corporation properly ask for a bond of indemnity from the "Good Roads Commission" that it would not negotiate the lost cheque?

Answer.—The bank through its certification of the first cheque having rendered itself liable to a holder in due course is entitled to require a bond of indemnity from the municipality before acting on a "stop payment" order or paying a duplicate. The question of whether the municipality is entitled to require bond of indemnity from the Good Roads Commission is a matter with the propriety of which the bank is not concerned, but we do not think in the circumstances the Commission could be required to give a bond.

LOST CHEQUE. RIGHT OF DRAWER TO INDEMNITY ON ISSUE OF DUPLICATE.

Question 220.—A cheque is lost in transmission between a bank in Montreal and one in Toronto. The drawer refuses to give a duplicate unless the bank in Montreal gives a bond of indemnity. Is the latter obliged to do this? Would not the drawer be relieved of liability by stopping payment of the cheque?

If the cheque had been certified by the bank on which it is drawn, what would be the right procedure?

Answer.—Under section 156 of the Bills of Exchange Act, the drawer on giving a duplicate is entitled to suitable indemnity, and the Bank in Montreal must furnish it to his satisfaction, or, if they cannot agree, to the satisfaction of the court. The stopping of such payment does not relieve the drawer from liability, inasmuch as the cheque might be negotiated and in the hands of third parties, who would, if the cheque were dishonoured, have a valid claim on the drawer.

If the lost cheque has been certified, the rights of the bank on which it has been drawn have to be considered. Its strict rights depend on the nature of the certification. If this amounts to an acceptance it is entitled to be fully indemnified, and in any case the practical course is to include both the drawer and the bank in the indemnity furnished.

CHEQUE LOST IN MAIL—RIGHTS AGAINST CUSTOMER FROM WHOM RECEIVED AND AGAINST ENDORSER.

Question 221.—A customer deposits a cheque drawn on an out-of-town point, which is duly credited to him, and sent by mail for collection. It is lost in the mails, and drawer refuses to give duplicate unless the bank indemnify him.

(1) Is the bank not entitled at once to charge the amount of the lost cheque against the customer's account?

(2) Is the bank under any obligation to give the required bond of indemnity?

(3) Should not the customer give the bond?

(4) If the cheque had been payable to another party, who endorsed it to the customer, how can he be made responsible to the bank?

Answer.—The bank cannot charge the customer's account with the lost cheque unless it has an understanding with him that although it has credited the amount to him (*i.e.*, has cashed or negotiated the cheque) it was acting as his agent in collecting it. In the absence of a special contract the bank had only the remedy which it would have against any endorser; it must procure a duplicate from the drawer, present it, and if dishonoured give the customer due notice. Possibly, if a "copy" is presented under section 120 of the Bills of Exchange Act, and the drawee bank replies, "no funds," and the cheque is protested, the bank would have an immediate right of action against the endorser, and could charge the amount to his account.

(2) The bank, as holder, is the only party who can obtain a duplicate and must give the security. (Section 156).

(3) The customer is not concerned until the bank had established its right to charge him, as above described.

(4) An endorser on a lost cheque who comes between the drawer and the customer may be made to endorse a duplicate (on suitable indemnity being given), or he may be sued, and under section 157, cannot set up the loss of the cheque, if indemnified.

CHEQUE SENT FOR COLLECTION AND LOST IN MAILS—UNAVOIDABLE DELAY IN PRESENTATION DOES NOT DISCHARGE DRAWER.

Question 222.—On July 18th we sent a cheque on a branch of La Banque Ville Marie to that branch for collection. On July 26th (which would be the usual time to ask its fate), hearing of the suspension of the bank, we wired them to remit cash or return it at once, to which they replied that it had not been received. On the same day we notified the endorsers (from whom we have a general waiver of protest), that it had not been paid, and suggested that they notify the drawer.

The drawer writes that the cheque has not been charged to him, but that, as he sent it to the endorsees on July 14th, they had ample time to cash it before the suspension, and he disclaims any responsibility. As they are out-of-town customers, we claim that the cheque was forwarded in the ordinary course of business, and the drawer was notified of its non-payment as speedily as circumstances permitted. On whom do you think the loss (if any) should fall?

As the cheque has not turned up in the mails, as yet, what action should be taken?

Answer.—We think the drawer is responsible notwithstanding the delay in presentation, assuming that there was no unreasonable delay on the part of the payee or the bank in sending the cheque forward.

If a cheque is not presented within a reasonable time, then under sec. 166 1 (a), the drawer is discharged to the extent of any damage he suffers by such delay, but delay in making presentment for payment is, under sec. 91, excused when the delay is caused by circumstances beyond his control. Delay in the post-office would, we think, come within this rule.

RIGHTS OF PARTIES TO A LOST CHEQUE, THE DRAWER BEING DEAD.

Question 223.—A cheque on a distant point is cashed for a customer, and is subsequently lost in the mails. The drawer of the cheque dies and the legal representatives refuse to give a duplicate cheque. There were funds to pay the cheque when drawn. What is the position of the parties?

Answer.—The matter may be regarded in this way: the delay in presenting the lost cheque has not discharged the drawer or endorser (see sections 91 and 105, Bills of Exchange Act), but the death of the drawer has countermanded the order to pay, and the drawee bank could therefore not pay the cheque if it should now be presented. Section 156, respecting the right to demand a bill of the same tenor, would not apply, as the cheque of the executors would not be the same thing as the cheque of the drawer himself, for if the estate were not solvent the giving of such a cheque would create a preference. This they cannot properly do, and besides if the bank did not pay it the executors would be personally responsible—a liability they are not obliged to undertake.

It is quite clear that the rights of the parties still subsist notwithstanding the disappearance of the cheque, and we think that the holder could make a claim upon the estate for the amount of the cheque. On proof of the facts, and on suitable indemnity being given, such a claim should succeed, under section 157 of the Act.

CHEQUE CASHED BY A BRANCH OF A BANK OTHER THAN THE BRANCH ON WHICH IT WAS DRAWN—SENT FOR COLLECTION AND LOST IN MAILS.

Question 224.—A cheque on a bank in Hamilton in favour of A. was cashed for him by a bank in Toronto. It was forwarded by mail in due course for presentment, but the letter has not reached its destination, and the drawer has since failed. What are the bank's rights against the drawer of the cheque and against A?

Answer.—Under clause 91 of the Bills of Exchange Act, "delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder." Delay through loss in the mails is, we think, such as comes within this definition. The bank's rights against the drawer and endorser of the above cheque are therefore just such as they would be against similar parties to a bill which is not due, and they continue liable thereon until the cause of delay ceases to operate.

The bank's remedy in the case is provided by sections 156 and 157 of the Act. It has a right to demand a duplicate cheque from the drawer on giving suitable indemnity, and if this is then duly presented, and, if dishonoured, notice given, suit can be brought against the drawer and endorser.

STOP PAYMENT OF A CHEQUE—SUBSEQUENT NEGOTIATION BY THIRD PARTY IN GOOD FAITH.

Question 225.—A issues a cheque payable to B or order, and subsequently stops payment of same. The cheque is negotiated to C, who does not know of payment having been stopped.

The cheque having been dishonoured, is C entitled to recover the amount from A, the drawer of the cheque?

Answer.—The holder's position in this case is precisely the same as that of the holder of any negotiable bill of exchange. If notice of dishonour has been given he can sue both the drawer and the endorser.

DEFACEMENT OF CHEQUES AFTER PAYMENT OF SAME HAS BEEN STOPPED.

Question 226.—John Johnson gives his cheque to James Peterson, and subsequently instructs his bank to stop payment. Cheque is presented by mail by a second endorser, Peter Smith. The bank writes, "payment stopped," on face of cheque in red ink. Since cheque was the property of Peter Smith, was the bank justified in mutilating it?

Answer.—It would have been more discreet for the bank to have pencilled the reason for refusal on the back of the cheque as usual. Nevertheless, the holder's rights are in no way prejudiced by the so-called mutilation.

The difficulty would not have arisen had the cheque been protested.

CHEQUE ISSUED BY TREASURER OF A MUNICIPALITY — INSTRUCTIONS TO STOP PAYMENT GIVEN BY A COUNCILLOR.

Question 227.—An account is passed by a town council and a cheque issued in regular form. Before presentation, the bank received verbal instructions from one of the councillors to stop payment of the cheque, and subsequently, similar instructions purporting to come from the town treasurer are received by telephone. On presentation of the cheque for payment, the treasurer is called up by telephone and denies having given any instructions regarding the cheque. Would not the bank incur liability for damages if payment were refused, there being sufficient funds at credit of the account?

Answer.—A municipal councillor has no authority to countermand payment of cheques issued by the treasurer of a municipality, and if his instructions were acted upon without reference to the treasurer it is possible that the bank would be liable in any action by the corporation for damages, although this liability would not be a serious matter if it could be shown that the bank had taken precautions to safeguard its customer's interests. Proper precaution would, we think, involve in the case instanced an immediate communication with the treasurer on receipt of the councillor's message, or if this was not done, confirmation by letter of the telephone message purporting to come from the treasurer.

STOP PAYMENT OF A DRAFT ISSUED BY A BRANCH BANK ON ANOTHER BRANCH.

Question 228.—Can a branch bank legally stop payment of its own draft on another branch? I do not see how it can if the draft is presented by an innocent holder for value and the endorsement purports to be that of the payee. Will be glad of your opinion and reasons. Bills of Exchange Act in force here (Jamaica) is the same as the English Act.

Answer.—The branch which issued the draft might countermand payment, but the bank would be taking the risk of any claim which the holder would have against it by reason of the dishonour of what is its own demand obligation and payment of which an innocent holder for value could enforce.

STOP PAYMENT OF A MARKED CHEQUE.

Question 229.—(1) The successful tenderer for a contract being let by the town of B, discovers after being awarded the contract, that he has made a mistake in his calculations. He asks to have his tender cancelled and the accompanying marked cheque returned, which the town refuses to do. Can he stop payment of the cheque?

(2) The town of B bring to a local bank the above mentioned cheque which is drawn on a bank in another place, and ask to have it cashed without recourse against the town. Would the bank be safe in cashing it?

Answer.—(1) A customer cannot stop payment of a marked cheque which has reached the hands of the payee, without the payee's consent. If the customer chooses he can bring proceedings against the town for the return of the cheque, and can obtain, if the court will grant it, an injunction preventing their dealing with it and preventing the bank from paying it, but short of restraint by the court we do not see on what ground the bank could refuse to pay the cheque.

(2) A bank might be safe in negotiating a marked cheque without recourse to the payee if they knew of nothing affecting the payee's title to the cheque, or his right to negotiate the same. The proposal, however, would be so unusual it might almost constitute notice that something was wrong, and we think it would be unwise to adopt such a course.

STOP PAYMENT OF LOST CHEQUE PAYABLE TO BEARER.

Question 230.—A, who was the holder of a cheque signed by B, payable to bearer, notifies the drawee bank that he has lost said cheque and wishes payment stopped.

By section 167 of the Bills of Exchange Act, the bank's duty to pay it terminated by countermand of payment.

(1) Must not this countermand be given by maker alone?

(2) If the bank refuses payment on the notification not to pay, received from a person said to be the holder, can the maker have an action against the bank?

(3) If the bank pays, for want of a proper order from maker, can the holder in good faith have an action against the bank?

Answer.—The countermand of payment referred to in section 167 of the Bills of Exchange Act is clearly a countermand by the customer. If the bank refuses payment on the notification of someone not the customer, and if it should turn out that the person presenting the cheque was a holder in due course, the maker would have an action against the bank for refusing payment of his cheque, as the maker would be liable upon the cheque to the holder in due course. If the bank pays the cheque to a holder in due course, the original holder would have no action against the bank, as the cheque has, as between him and the subsequent holder in due course, ceased to be his property. If, however, the bank paid to a person who was not a holder in due course, under such circumstances as would disentitle it to say that the cheque was paid in good faith, then the original holder of the cheque could claim from the bank its value in an action of trover for conversion of the cheque.

The receipt of such a notice from a person claiming to be the holder would undoubtedly put the bank upon enquiry as to the rights of the person presenting the cheque, and the bank should satisfy itself that he is really a holder in due course.

BANK DRAFT—RIGHT OF ISSUING BANK TO STOP PAYMENT AT THE REQUEST OF THE PURCHASER.

Question 231.—(*a*) A Bank in Canada issues a demand draft on their agents in England, sending advice in due course. The purchaser forwards the draft to payee, but after doing so requests the bank to telegraph to the agents to stop payment of the draft. Would the agents be justified in refusing payment? If so, on what grounds?

(*b*) Can a bank under any circumstances stop payment of its own draft on its agents or another branch?

Answer.—Taking up the second enquiry first—a bank may stop payment of its own draft on its agents or another branch so long as the drawees have not come under acceptance or otherwise obliged themselves to pay the same. Before acceptance a drawee has no responsibilities whatever to the payee or subsequent holders, and would be bound to obey the instructions of the drawer if he had not already come under some obligation in the matter.

Question (*a*) is practically answered by the above, and the fact that the question refers to a demand draft on the bank makes the case all the clearer. Whether drawn on a bank in England or a bank in Canada, the provisions of the Bills of Exchange Act respecting a countermand of payment would apply, see sec. 167 (*a*), (sub-sec. 1 of sec. 75 in the English Act). The agents would not only be justified in refusing payment on instructions, but if they disobeyed they would be unable to charge the draft to the drawer's account.

In either case the holder could sue the bank as drawer, precisely as any party to any dishonoured bill might be sued.

BANK DRAFT—PURCHASER HAS NO GROUND FOR ACTION IF ISSUING BANK REFUSES TO STOP PAYMENT.

Question 232.—A purchases a draft on Toronto from a bank, and endorses it over unconditionally to B, and mails it to him. Some days later A asks the bank to stop payment of this draft on the ground that an error of some kind has been made, the nature of which he declines to state. (1) Has the bank any power to stop the payment of the draft at the request of A? (2) If the bank refuses this request, would A have any ground for action?

Answer.—The bank has the "power" to dishonour its own obligation by refusing payment, but it would not be justified in doing so on the mere request of A, without explanation of his reason for making it. The bank as drawer would in any case be liable to the "holder in due course" of the draft. Whether B would prove to be such the facts do not show, but his endorsee for value (his bank for example) would probably be.

2. A. has no ground for action if under such circumstances as are mentioned the bank should, notwithstanding his request, pay the draft.

STOP PAYMENT OF CHEQUE CERTIFIED BY BANK AFTER BUSINESS HOURS.

Question 233.—A gives B a cheque after three o'clock. B goes to A's bank and has the cheque certified the same evening. Next morning when the bank opens for business A stops payment of the cheque but finds it has been certified. What recourse, if any, has he against the bank?

Answer.—A has no recourse against the bank.

TELEGRAPHIC REQUEST TO HOLD FUNDS FOR A CHEQUE.

Question 234.—Do you consider it safe for a bank to hold funds which are at a customer's credit, on a telegraphic request from another bank which is about to cash the customer's cheque? What would be the result if another cheque would be dishonoured before the first cheque was presented? What if the cheque for which the funds were held proved to be forged, or if payment were countermanded by the drawer?

Answer.—This is one of the practices which as a practice is found to work very well, but in theory is quite indefensible. A bank cannot accept or pay a cheque until it is actually presented, and notwithstanding such a telegraphic request or promise, the money is still at the customer's credit, and he has a right to say what shall be done with it. The refusal of another cheque under the circumstances mentioned might therefore expose the bank to a claim by the customer for damages, and this would be the result whether the cheque telegraphed about were forged or not, or if it were subsequently countermanded.

TELEGRAPHIC REQUEST TO HOLD FUNDS AND REPLY THAT CHEQUE WAS "GOOD IF SIGNATURE IN ORDER"—PAYMENT AFTERWARDS STOPPED BY DRAWER.

Question 235.—Bank A wires bank B as follows: "We have cheque of John Smith on you for $2,000. Will you pay on presentation"? To which bank B replies: "Cheque of John Smith for $2,000 good if signature in order." The following day John Smith stops payment of the cheque by wire, and bank B telegraphs bank A that payment of the cheque has been stopped. The cheque is presented in due course by bank A. Must bank B remit for the cheque or act on the instructions of its customer and refuse payment?

Answer.—A bank has no right to debit the amount of a cheque to its customer's account until the cheque is actually presented, and the customer has unquestioned control over his balance until actual presentation takes place. Bank B must therefore act upon the instructions of its customer and refuse payment. Bank A as holder of the cheque would still be entitled to such recourse as is open to it against the drawer, but whether or not it could recover from bank B would depend upon the legal effect of the answer given and the extent to which its position may have been prejudiced thereby.

PROMISE, BY TELEPHONE, TO HOLD FUNDS FOR A CHEQUE—LIABILITY OF DRAWEE BANK IF CUSTOMER STOPS PAYMENT.

Question 236.—A city bank asks by telephone if there are sufficient funds to the credit of a certain account to pay a cheque for a named amount. On being advised that sufficient funds are available the inquiring bank states that they are sending the cheque and asks that funds be held to meet it. We answer "Yes." Before the cheque comes the client stops payment of the cheque. Can the inquiring bank exact payment from us?

Answer.—No; the drawer is quite within his rights in countermanding payment before the cheque is presented for payment as defined in the Bills of Exchange Act, but as the drawee bank has promised to pay the cheque it would probably be liable to the inquiring bank.

PROMISE, BY TELEPHONE, TO HOLD FUNDS FOR A CHEQUE—PRIOR PRESENTATION OF ANOTHER CHEQUE.

Question 237.—A country bank asks a city branch by telephone if there are sufficient funds to the credit of a certain account to pay a cheque for a named amount. The reply is that there are sufficient funds and that they will be held for the cheque. Before the cheque reaches the drawee bank another cheque is presented on the same account and sufficient funds are not available for the latter if the funds are held as advised for the first cheque. Is the drawee bank compelled to honour cheque No. 1, or does cheque No. 2 have the prior right to payment?

Answer.—A cheque cannot be charged to a customer's account unless it is actually presented and, in the circumstances stated, cheque No. 2, presented between the answer being given to the inquiry regarding cheque No. 1 and its presentation, would take precedence and the drawee bank should honour it, but it would seem to have made itself liable on cheque No. 1 to the presenting bank.

CERTIFIED CHEQUE PAYABLE TO THE DRAWER'S ORDER — SUBSEQUENT GARNISHMENT OF FUNDS AT CREDIT OF ACCOUNT.

Question 238.—A customer of a bank draws a cheque on it in his own favour for the full amount of his balance and has it accepted. The following day proceedings equivalent to garnishment are taken by his creditors, and any balance due him by the bank would have passed from his control.

On the day following this, the customer presents the cheque for payment. Should the bank pay him the money, any sums due by it having been legally attached?

If the cheque were presented by a third party, what would be the position of the bank?

Answer.—We think that the attachment would prevent the bank paying the amount of the cheque to the customer under the circumstances mentioned.

Its right to pay a third party would depend on the nature of the so-called "acceptance." If it were such as would be held an "acceptance" under the Bills of Exchange Act, the rights of the third party would of course prevail.

GARNISHMENT OF FUNDS REPRESENTED BY AN ACCEPTED CHEQUE—DUTY OF BANK TO PAY HOLDER IN DUE COURSE.

Question 239.—A customer gives a cheque which is presented for acceptance by the payee, and is accepted. Before it is presented for payment, the drawer commences legal action against the payee and the bank is served with a garnishee order forbidding it to part with the funds represented by the accepted cheque. What is the legal position of the bank?

Answer.—The bank would be bound to pay the cheque on presentation by a holder in due course, and so far as the funds represented by it are concerned, the garnishment is of no effect.

WRIT OF GARNISHMENT SERVED ON THE MAKER OF A NOTE BY A CREDITOR OF THE ORIGINAL PAYEE—CAN THE MAKER SAFELY PAY THE HOLDER?

Question 240.—A is promissor on a note in favour of B, which is overdue and is held by a bank, having been duly endorsed by B. A creditor of B.'s serves a writ of garnishment on A for the amount due on the note. Can A safely pay the bank which holds the note, he being ignorant whether the bank holds it for value or merely for collection on account of B?

Answer.—The promissor is bound to pay the holder of the note. If B has any interest in the moneys after they are collected, his creditors might take proceedings to attach it in the hands of the bank. A, however, is protected if he pays the note to the holder.

WRITS OF GARNISHMENT — THEIR EFFECT UPON SUBSEQUENT BANKING TRANSACTIONS.

Question 241.—Smith owes Jones, who cannot collect his debt. Jones hears that Brown is going to give Smith a cheque, and has a writ of garnishment issued and left at the chartered bank on which the cheque is drawn. The bank tells Smith that he had better go and arrange it with Jones, which Smith does. Could Smith have protested the cheque and held the bank liable? What action should the bank have taken in that case if they had failed to avoid the main issue as they did? The teller in this case held the cheque presented by Smith under the writ of garnishment, but suppose Smith had demanded same through his lawyer?

Answer.—We are advised that the garnishee order is quite ineffective in such a case, and that if the bank refuses to pay the party presenting the cheque merely on the ground that the money was attached by the writ, it would be liable to the drawer of the cheque for damages for dishonouring his cheque. We understand that only moneys due or accruing due can be held under garnishee proceedings. At the time the writ was served in the case mentioned, there was clearly no money due or accruing due to Smith.

STERLING BILL DRAWN ON A CANADIAN BANK—RATE OF EXCHANGE.

Question 242.—The customer of a Winnipeg bank draws at London, England, a cheque on them for £1,000 sterling. What rate of exchange is the holder entitled to receive?

Answer.—If the cheque contains no stipulation as to the rate of exchange, the holder is entitled to receive payment at the current rate at Winnipeg for sight drafts. See section 163, Bills of Exchange Act.

RATE OF EXCHANGE ON STERLING ACCEPTANCES.

Question 243.—A customer has a sterling invoice of £10,000 which he must convert at " the current rate for the day," and pay in Canadian funds in Montreal. Which sterling quotation should be given—the counter rate or the rate between banks?

Answer.—" The current rate for the day " as applied to sterling acceptances or other obligations is the bankers' selling rate for demand bills on London—the counter rate.

BILLS PAYABLE IN STERLING DRAWN ON POINTS IN CANADA.

Question 244.—(1) Can a bank legally pay a demand draft, payable in sterling, drawn upon it by an English bank, at a less rate than that provided in section 163 of the Bills of Exchange Act?

(2) At what rate should a cheque be paid when drawn in sterling though otherwise upon an ordinary cheque form, dated, say, Toronto, and sent for collection by an English bank?

Answer.—(1) The rate at which a bank should pay a sterling demand draft, drawn on it by an English correspondent, is fixed by section 163 of the Bills of Exchange Act. If the bill is drawn simply for so much sterling money without any reference to a rate of exchange, it should be paid at the rate for sight drafts at the place of payment on the day the bill is payable.

(2) It would be unusual for a cheque to be drawn in Canada, upon a Canadian bank, payable in pounds, shillings and pence. If such a cheque were drawn we think the bank would probably be justified in regarding it as an order to pay the current value of a similar amount of British gold, *i.e.*, to convert the sterling at $4.86⅔. In remitting to an English correspondent for such a cheque it would have to be treated as drawn for the amount in Canadian currency computed as above, and the exchange calculated accordingly.

LETTERS OF CREDIT—CURRENT RATE OF EXCHANGE.

Question 245.—Where Bank A cashes a draft under a credit issued on Bank B, must Bank A accept whatever rate Bank B may claim to be the current rate at the point at which the credit is drawn?

Answer.—The holder is clearly not bound to take an inadequate rate from the drawee, but unless the latter will make himself liable by some undertaking in the nature of an acceptance, the holder would have to look to the drawer or issuer of the credit for reimbursement.

STERLING CHEQUE ON CANADIAN BANK.

Question 246.—A man in London draws a cheque on a bank in Canada for so many pounds, shillings and pence. At what rate should it be paid?

Answer.—At the current rate for sight drafts on London at the place where it is payable on the day on which it is presented for payment. (See sec. 163, Bills of Exchange Act.)

(Note.—The copy of cheque sent by our correspondent is dated at a town in Canada, but we have answered the question as put. If drawn in Canada in sterling, the section quoted would not apply).

NINETY-DAY BILLS—RATE OF EXCHANGE.

Question 247.—What is the proper rate for a 90-day bill on London as compared with a 60-day bill, and how is it calculated?

Answer.—The difference between a 60 and a 90-day bill should be about half the difference between a demand and a 60-day bill. The difference in each case depends chiefly on the market discount rate in London. There are, however, minor considerations which modify the effect of the rate, as long bills sometimes command a more favourable discount rate than the shorter bills and sometimes a less favourable.

Generally speaking the difference between demand and 60-day bills is 60 days' interest at the current market rate in London, the difference in stamps also being allowed for; and between 60 and 90-day bills, 30 days' interest at the same rate.

BILLS DRAWN ON CANADA "PAYABLE WITH EXCHANGE."

Question 248. A sight draft for $1,000, drawn in New York on a firm in New Glasgow, "payable with exchange," is sent to a bank in Halifax, thence to the agency of another bank in New Glasgow. The latter agency presents bill and demands ¼ of 1% exchange. On the day the draft is presented other banks in New Glasgow offer to sell drafts on New York for ⅛ of 1%. Can the bank presenting collect more than ⅛ of 1% as exchange? You might also state whether the fact of the draft having been sent through a bank in Halifax, makes any difference as to the rate of exchange.

Answer.—Assuming that what the draft means is that the acceptor shall pay $1,000, plus the cost of transferring the same to New York, and that the current rate of exchange on New York, at the place of payment, is ⅛%, the acceptor is bound to pay, and the holder to accept that rate.

What is the proper rate is a question of fact, to be determined as other questions of fact are; in the last resort by an action at law.

The holder of the draft can collect only the amount of the same and the exchange; he cannot make the acceptor pay anything in the nature of a collection charge. Nor does it make any difference that it has passed through a number of collecting agents. All that the acceptor is concerned in is to comply with the order contained in the draft to pay $1,000, and in addition the current local rate of exchange on New York, whatever that may be.

CHEQUE ON A CANADIAN BANK RECEIVED FROM AN AMERICAN BANK DRAWN "WITH EXCHANGE."

Question 249.—If a cheque on a Canadian bank is received from an American bank drawn " with exchange " is the drawee bank authorized to add the prevailing premium to the cheque when remitting? If that form were not sufficient to secure remittance of the exchange, would a cheque drawn with " exchange and the prevailing premium " be effective for the purpose?

Answer.—The phrase " with exchange " is too indefinite to warrant the drawee bank adding anything to the face amount of the cheque, but, provided that it is added by the drawer—and thus only could it be effective—the phrase " with exchange on (say) New York " would justify the drawee bank in adding to the face amount of the cheque a sum sufficient to meet the premium on exchange on the point named at the time of presentation.

NOTE PAYABLE "WITH INTEREST AT THE RATE OF .... PER CENT."

Question 250.—A note has the following words printed on it: "With interest at the date of ...... per cent. per annum as well after as before maturity." If no rate is filled in what can be collected? If any, what rate could be added to the bill if discounted?

Answer.—Interest is due on the note at the legal rate of five per cent.

INTEREST RUNS ON DAYS OF GRACE.

Question 251.—In the case of a man borrowing $100 for twelve months at, say 6 per cent., if he pays the note on the last day of grace, can interest be legally collected on the three days of grace?

Answer.—If a man gives a note at twelve months for $100 and interest at 6 per cent., he is liable for the interest for twelve months *and three days.*

NOTE FOR "$1,000 AT SIX YEARS WITH INTEREST AT SIX PER CENT. PER ANNUM"—INTEREST DUE ONLY AT THE EXPIRATION OF THE TERM.

Question 252.—A gives B a note for $1,000 at six years with interest at six per cent. per annum. B claims interest is payable yearly. A claims the note with six years' interest is due at the expiration of the term. Which is correct?

Answer.—A is correct in his contention that the six years' interest is due at the expiration of the term. The note does not state that the interest is payable yearly, it merely sets out the rate of interest, which is in this case six per cent. per annum. If the interest were payable yearly, it would be necessary to state so. A parallel case would be where a loan secured by a mortgage is payable on the due date, no mention being made (as is usually done in the case of mortgages) as to the dates of the payment of interest. Interest in this case must be calculated at simple rates. See Morse on Banking. Section 309.

METHOD OF COMPUTING INTEREST ON DISCOUNTED NOTES.

Question 253. A demand note for $1,000 is dated August 1st, 1917, and bears interest at the rate of 8 per cent. per annum. Our practice in computing the interest, and to this our customer agrees, is to add it at the end of each month. In this case for August we would calculate the interest on a basis of 30 days. If the note were paid on September 5th we would then add interest for five days. A customer argues that the interest should be computed for 31 days in August and only four in September. What is the usual procedure adopted by banks in calculating interest on notes of this kind?

Answer.—The usual procedure is to exclude the first and include the last day. In the case cited interest should be charged for 30 days in August and five days in September, 35 days in all.

RATE OF INTEREST ON TIME ACCOMMODATION NOTES.

Question 254. A heavy borrower claims he should pay us "interest rate" and not "discount rate" on time accommodation notes—*i.e.*, he wants to add the month's interest to the face of the note and when discounting expects us to charge him on only the face value of the note; he claims the interest is not due us until maturity of the note. We know that "discount rate" is customary, but what is the bank's authority?

Answer.—The payment discounted is the sum that will be payable at the maturity of the note, namely, its face amount plus interest from its date to its maturity, and interest should be charged upon this sum. But the amount to be charged for discounting a note is, within the limits prescribed by the Act, a matter for arrangement between the bank and its customer; there is no special authority other than this.

CHEQUE DISHONOURED AND PAID AFTER SOME DAYS' DELAY —HOLDER'S RIGHT TO INTEREST.

Question 255.—A cheque dishonoured on 9th April is to be paid on 15th May. Has the holder a legal claim on the drawer for interest?

Answer.—A cheque is a bill of exchange payable on demand. The cheque was presented and dishonoured on April 9th. The holder may recover from the drawer the amount of the cheque and interest from time of presentment for payment. (Bills of Exchange Act, secs 165 and 134).

NOTE PAST DUE—RIGHT OF HOLDER TO INTEREST IF NOT MENTIONED IN THE NOTE.

Question 256.—Can interest be legally collected on a promissory note after note becomes due, no mention of interest having been made on note, said note six months overdue?

Answer.—Under section 134 (b), Bills of Exchange Act, such a note, if dishonoured, bears interest from the date of maturity.

NEW STAMP TAX—BANK REQUIREMENTS.

257.—The stamp tax on bank notes, cheques or other documents, as set forth in 10-11 Geo. V. c. 71, s. 1, passed by the House of Commons at the end of June, 1920, in amendment to the Special War Revenue Act of 1915, has been the cause of many difficulties arising from misunderstandings on the part of the general public, according to the Department of Inland Revenue, which advises as follows:—

The value of the tax may be affixed to bills of exchange, notes or documents by means of an adhesive stamp or of a die stamp.

A stamp of the value of two cents must be affixed to or impressed upon a bill of exchange or promissory note not exceeding $100, transferred to a bank in such a way as to constitute the bank the holder, or delivered to a bank for collection, and a further tax of two cents is required for every additional $100 or fraction thereof. A bill of exchange payable on demand, sight, presentation, or three days after date or sight, for the purpose of the value of the tax, is to be deemed to be drawn for an amount not exceeding $100.

A stamp of two cents only is necessary for a promissory note delivered to the bank for an advance to be made by the bank, whatever the amount of money for which the note is made. The bank is required to make a quarterly statement of the maximum amount of advances made to the person transferring or delivering such notes, outstanding at the close of business on any day during the period of three months or portion of that period then ending. and must affix a stamp tax of the value of two cents for every 100 dollars or fraction thereof by which the maximum amount of the advances exceeds $100. Upon the bank rendering such statement to the person to whom the advances were made, the amount of the stamps affixed shall be payable by the person to the bank.

Promises to Pay.

With regard to documents or writings containing a promise to pay or pledge of securities to secure payment of advances when no promissory note or bill of exchange is transferred or delivered to the bank, a provision has been made that the bank shall make a quarterly statement of the maximum amount of the advances and shall affix to it a stamp of the value of two cents for every $100 or fraction of $100 of the maximum advance, the amount in stamps being payable to the bank by the person to whom the advances were made, on the rendering of the statement to that person.

If the person to whom an advance is made in either of the ways mentioned above closes the account at any time during the quarterly period, or if the account becomes payable at any time during the quarterly period a statement of the maximum advances shall be made at that time and the value of the tax to be paid in stamps determined in the same manner as previously mentioned.

In the case of overdrafts the bank is required to make a statement of the maximum amount and affix stamps of the value of two cents for every one hundred dollars or fraction of it contained in the maximum amount. the amount of the tax being payable by the person to the bank on the rendering of the statement. Overdrafts for the purposes of the statement and tax to be affixed, are not to be considered outstanding until the fourth day after which the account is overdrawn.

Every adhesive stamp affixed to a bill, note or statement must be cancelled by the bank at the time of transfer, delivery, issue or rendering. No cheque or other bill of exchange is to be paid or issued by the bank without the requisite stamps attached.

Notes, cheques and bills made outside Canada, but payable in the Dominion, must have stamps of the required value attached before payment is made by the bank.

Every person who transfers or delivers a bill of exchange or note without a stamp is liable to a penalty not exceeding fifty dollars. The penalty for the issue of bank cheques without the requisite stamp is one hundred dollars. Failure on the part of the bank to prepare the required statement within the time called for by the provisions of the amendment, or to affix stamps thereto, will make the bank liable to a penalty equal to the amount of the stamps required, and a further penalty of $500. A bank omitting to cancel stamps on notes, bills of exchange, cheques, receipts or statements is liable to a penalty of the amount of the stamps required and a further one hundred dollars.

The stamp tax on the sale or transfer of stock is to be estimated as two cents on every one hundred dollars or fraction of that amount on the par value of the stock or share transferred or sold. In the case of sale when the evidence of transfer is shown only by the books of the company the stamp is to be affixed or impressed on such books. In the case of an agreement to sell, or where the transfer is made by delivery of the certificate signed in blank, there must be made and delivered by the seller a bill or memorandum of such sale to which the stamp shall be affixed, every bill or memorandum to show the date, name of the seller, amount of the sale and the matter to which it refers. It is provided that the first delivery by a corporation or company of such shares or debenture stock in order to effect an issue, shall not be subject to the tax imposed by this sub-section of the Bill. Any person violating these provisions will be liable to a penalty not exceeding $500.

DEBIT SLIPS—STAMP REQUIRED ON TRANSFER FROM ACCOUNT OF ONE CUSTOMER TO THAT OF ANOTHER.

Question 258.—Is a two-cent war tax stamp required on a debit slip transferring funds at a customer's request?

(a) From his savings account to his current account?

(b) From his account to that of another customer?

Answer.—(a) No; but if a cheque is used it must be stamped.

(b) This is a transfer of funds from one party to another and a stamp is required.

DEBIT SLIPS—WAR STAMP IS NOT REQUIRED WHEN THERE IS NO ACTUAL TRANSFER OF FUNDS.

Question 259.—If a debit slip is charged to a customer's account and the amount of the debit is applied on the customer's indebtedness to the bank does the debit require a war tax stamp? Is it only debit slips on which a receipt is actually taken that stamps are required regardless of the fact that in some cases a receipt may be considered necessary or a receipt implied but not taken?

Answer.—This would be an office entry only and a stamp would not be required. A stamp is only needed when there is an actual transfer of funds.

CHEQUES TO THE ORDER OF THE MINISTER OF FINANCE MUST BEAR STAMP.

Question 260.—Does a cheque made payable to the Minister of Finance or order, given in payment of War Loan bonds, require a war tax stamp under the Special War Revenue Act, 1915?

Answer.—Such a cheque requires a stamp for two cents under the Act. The funds moved by the cheque are the funds of the drawer, not the funds of the Crown.

BRITISH AND FOREIGN POST OFFICE ORDERS DO NOT REQUIRE TO BE STAMPED IN CANADA.

Question 261.—Do British and U. S. Postal orders require war tax stamps affixed thereto when negotiated through a bank? Our postmaster says not.

Answer.—Post Office Money Orders issued outside of and payable in Canada do not require to be stamped.

CANADIAN WAR STAMP MUST BE AFFIXED TO DRAFTS ISSUED IN THE UNITED KINGDOM, IF PAYABLE AT OR NEGOTIATED THROUGH CANADIAN BANK.

Question 262.—Is it necessary to affix a Canadian War Stamp to a money order or draft issued in the United Kingdom, which already bears a British bill stamp when presented for payment in Canada?

Answer.—Yes. If payable at or negotiated through a Canadian bank. If the money order is issued by the British postal authorities the answer is, No.

REQUISITION FOR A DRAFT DOES NOT REQUIRE WAR TAX STAMP.

Question 263.—Is "war tax" necessary on the attached form of an express company's order for a draft? This order is charged to the account of the express company and a draft is issued for the amount stated. The form referred to is as follows:

No. . . . .

EXPRESS COMPANY.

. . . . .Agency . . . . .Q 19
To the . . . . .Bank . . . .
Required a draft on Toronto in favour of the treasurer.
. . . . .Express Company for . . . . . .dollars
in settlement of my report dated. . . . . .19. .
$. . . . . .Agent.

Answer.—No stamp is necessary under the provisions of the Special War Revenue Act, 1915, as this document is neither a cheque, bill of exchange or promissory note.

DUPLICATES OF LOST CHEQUES OR DRAFTS SUBJECT TO WAR TAX.

Question 264.—Is the "War Tax Stamp" required on duplicates for cheques or drafts, when original of such cheques or drafts has been lost?

Answer.—The Finance Department has ruled that duplicate issues of lost drafts and cheques, where such are not issued in "Original and Duplicate" or "First and Second" are subject to the tax.

WAR STAMP MUST BE AFFIXED TO SAVINGS BANK WITHDRAWAL RECEIPTS.

Question 265.—In our savings department we use receipt forms instead of cheques. Is it legally necessary to stamp this form? Copy is as follows:

Savings Bank Department.

No. . . . . Bank of . . . .
. . . . .19. .
Received from the . . . . .Bank, the sum of
. . . . .dollars, on account of the Savings Bank Department.
Principal. . . . .$
Interest. . . . .$

$

Answer.—It is necessary to place a two-cent stamp upon this receipt. Sub-section 4 of section 12 of the Special War Tax Revenue Act, 1915, applies to this case, and the bank is liable to a penalty of $100 if it pays out any money, taking this receipt without the stamp on it. (See sub-section 12 of the same section). Apparently the depositor withdrawing is intended by the Statute to pay the two cents. Sub-section 4 says: "No person shall sign a receipt for money paid to him by a bank chargeable against a deposit of money in the bank to his credit until he has affixed to the receipt an adhesive stamp of the value of two cents."

Deposit Slip Showing Part Payment by the Bank of a Cheque before it was Actually Deposited Does not Require Stamp.

Question 266.—Does a deposit made out showing the amount of a cheque less cash which the customer wishes to draw, need a war stamp, as

Cheque	$175 83
Less cash	75 83
Total	$100 00

Answer.—If you refer to the withdrawal of cash, viz., $75.83, it will not be necessary to affix a war stamp to the deposit slip. Section 12, sub-section 4 of the Special War Revenue Act, 1915, only refers to receipts for money paid by the bank chargeable against deposits of money in the bank.

Receipts for Life Insurance Premiums, Passing Through a Bank for Collection—War Stamp Tax need not be Affixed.

Question 267.—Do receipts for premiums sent us by life insurance companies require war tax? (Passed through our books the same as ordinary collections).

Answer.—No. Such receipts are neither bills nor cheques nor receipts for money paid by a bank as laid down in the War Revenue Act. The fact that they are passed through the books as ordinary collections makes no difference.

UNITED STATES REVENUE STAMPS.

Question 268.—Has a bank in the United States any right to require its Canadian correspondent to affix a United States revenue stamp to a draft upon it?

Answer.—We think the bank has a perfect right to lay down the conditions on which it will allow customers to draw cheques upon it. The correspondent must, if the drawee bank makes it a condition of the opening or continuance of the account, bear the cost of the stamp, and the bank may properly require it to be affixed before the drafts are presented.

ISSUING CHEQUE WITHOUT WAR STAMP—PENALTY.

Question 269.—Bank A receives from its correspondent in another town a cheque drawn on bank B. When presented for payment bank B refused to pay as there was no war tax stamp affixed. Would not it have been reasonable for bank B to have affixed the stamp which its customer omitted to affix, charge the customer for the stamp, and pay the cheque? If the cheque was returned to the correspondent of bank A on the ground that there was no war tax stamp affixed and later bank A presented it duly stamped to bank B for payment when there were no funds to meet it, although there were funds when the original presentation was made without a stamp, would there be any liability of either of the banks handling the cheque to the payee or endorser?

Answer.—Under the special War Revenue Act of 1915 every bank which pays, presents for payment or accepts payment of a cheque upon which the war tax has not been affixed is liable to a penalty of $100. Bank B is quite justified in refusing to pay such a cheque which would be an illegal instrument, and it is entirely a matter of discretion whether it affixes the tax on its customer's behalf. The drawer is liable to a penalty of $50 for issuing a cheque without a war tax stamp and bank A is liable in a penalty of $100 for presenting it for payment.

PRESENTING FOR PAYMENT, OR PAYING, CHEQUE WITHOUT WAR STAMP—PENALTY.

Question 270.—A bank having received from one of its branches a cheque drawn on us, without war tax stamp attached, presented same to us for payment. It was refused, the answer "No war stamp attached," being given. Collecting bank then protested the cheque. Could they legally do so, and was the notary who protested cheque laying himself open to the fine provided for handling unstamped cheques?

Answer.—Sub-sec. 10 of sec. 12 of the Special War Revenue Act, 1915, makes any bank which pays, or presents for payment, a cheque upon which the war tax stamp has not been affixed liable to a penalty of $100, and while the holder of the cheque would appear to be entitled to protest the same on non-payment, and no penalty would attach to the notary, the collecting bank would incur the penalty prescribed by the Act in presenting the cheque for payment.

IDENTIFICATION OF THE PAYEE OF A CHEQUE.

Question 271.—A cheque drawn to order is presented for payment by an individual unknown to the officials of the bank. He claims to be the payee. Is the bank entitled to delay paying the cheque while it takes diligent steps to satisfy itself as to the identity of the payee?

Answer.—We think the bank is so entitled. Unless the cheque has been accepted by the bank, and a liability thereby incurred towards the payee, the bank by refusing absolutely to cash the cheque would not be responsible to anyone but the drawer; *a fortiori* it would not be responsible to the payee by merely delaying payment. The drawer's direction to the bank in the cheque is to pay to a particular person, or to his order. Unless the drawer affords the bank some means of immediately identifying the payee, he must be taken to have intended that the bank should see to his identity. He therefore cannot complain if the bank takes a reasonable time to do this. Therefore the action of the bank in not immediately paying the cheque would not be considered a refusal to pay, entitling the drawer to an action for damages because his cheque was dishonoured. If the cheque had been accepted by the bank and a liability thereby incurred towards the payee, the bank's refusal to pay immediately on presentation by the proper person would give him the right to sue the bank at once, but his claim would be limited to the amount of the cheque and interest; he would have no claim for special damages; and, as costs are now in the discretion of the Court, it is entirely probable that the Court would refuse the plaintiff his costs if he were unreasonable in commencing his action, and if the bank in delaying payment acted reasonably under all the circumstances and paid the amount into Court as soon as it obtained reasonable evidence of identity.

IDENTIFICATION OF THE PAYEE OF A CHEQUE.

Question 272.—In your answer to Question 271 you say: " A bank can refuse to pay a cheque to order until the bank is satisfied as to the identity of the endorser."

A cheque is presented at the bank; the payee, who is unknown to the bank, requests the bank to accept the cheque pending his identification. This is refused, though there are sufficient funds at credit of drawer, and by the time payee is properly identified the funds are withdrawn, and payment of the cheque refused.

Can the holder sue the bank for damages?

Answer.—Inasmuch as the bank, before accepting the cheque, is not in privity with the payee, no liability to the holder would arise under the circumstances disclosed in the first question. We think, however, that notwithstanding the disadvantages occasioned by the bank becoming the acceptor of a cheque, referred to in the answer to Question 271, the bank should in fairness mark the cheque under the circumstances indicated in the above question, so as to protect the payee's interests during the necessary delay involved in the identification.

IDENTIFICATION OF THE PAYEE OF A CHEQUE.

Question 273.—With reference to Question 271, is the inference to be drawn from the answer thereto that it becomes a duty devolving upon the ledger-keeper before accepting a cheque payable to any specified person, to satisfy himself as to the identity of the said person, in order to insure the bank against the possibility of action being taken by him (the payee) on the ground of delayed payment?

Answer.—The question asked arises very naturally from the reply to Question 271, but we do not think that the change effected by accepting a cheque in the position of the bank towards the holder of it, involves consequences sufficiently serious to call for any change in the customary practice. The concluding part to the reply to Question 271 indicates that the bank would not suffer in costs or damages if it acts reasonably in the matter of requiring or procuring identification of the payee of a marked cheque.

IDENTIFICATION OF THE PAYEE OF A CHEQUE.

Question 274.—A cheque drawn on the Bank of , Montreal, payable to John Smith or order, is presented by a party claiming to be John Smith, but who cannot procure identification. Is the bank in question justified in refusing to pay the cheque on these grounds?

Answer.—The point was fully discussed in the answer to Question 271. The bank is entitled to delay payment until it can satisfy itself of the payee's identity, but it is bound to do what is necessary, and within a reasonable time. If the payee is absolutely unknown to any person in the place, the bank should doubtless refer to the drawer for instructions.

The point is one which is not usually pressed to its ultimate logical conclusion, *i.e.,* while it is the bank's duty to satisfy itself as to the payee's identity, the payee is equally interested in satisfying it and usually for his own convenience provides the necessary proof.

IDENTIFICATION OF THE PAYEE OF A CHEQUE.

Question 275.—Must a bank on which a cheque is drawn get the payee, if a stranger, identified?

(2) What is the custom of banks in Toronto on this point?

(3) Does not the English law hold good in Canada, namely, that a bank is protected if the cheque purports to be endorsed by the person to whom it is payable?

Answer.—(1) The bank must satisfy itself as to the identity of each payee of a cheque to "order" paid over the counter, or pay the cheque at its own risk.

(2) It is, we believe, the practice of the banks in Toronto to require identification as a rule; no doubt exceptions are sometimes made when the amount is small, but such exceptions are at the risk of the bank.

(3) Banks in England are protected under section 60 of the English Bills of Exchange Act, which is not in the Canadian Act.

The position of the banks in Canada in this matter is fully discussed in the reply to Question 271.

ERROR IN IDENTIFICATION—RESPONSIBILITY.

Question 276.—A cheque for $100 drawn by Jno. Smith, of Ottawa, payable to his own order, is presented by him at a bank for payment. Although not personally known at the bank, yet the bank knew that Jno. Smith, of Ottawa, is worth thousands of dollars. Mr. Smith is informed that the bank will cash his cheque provided he can be identified by someone known at the bank. He returns with Mr. Jones, of Hamilton, a well-known business man, who states that he knows Jno. Smith, of Ottawa, and that he is possessed of considerable means, and then Mr. Jones writes under Mr. Smith's endorsement the words, "Identified by Thos. Jones." The bank cashes the cheque, forwards it to Ottawa, from whence it is returned unpaid, and it turns out that the drawer was not the wealthy Jno. Smith, of Ottawa, and that Mr. Jones was mistaken, there being several Jno. Smiths, of Ottawa. Can the bank, having paid the cheque on Mr. Jones' identification of Mr. Smith, recover from Mr. Jones?

Answer.—Under the circumstances mentioned, Mr. Jones was not, we think, liable to the bank in any way, unless his act was fraudulent. If he believed the Jno. Smith whom he introduced to be the wealthy Ottawa man of that name, and in good faith made that representation to the bank, thereby inducing the bank to cash the cheque, he would clearly not be liable. The point is very fully discussed in *Derry* v. *Peck,* before the House of Lords, where these propositions are stated by Lord Herschell: First, in order to sustain an action in such a case there must be proof of fraud and nothing short of that will suffice. Second, fraud is proved when it is shown that a false representation has been made, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.

CHEQUE DRAWN "PAYMENT IN FULL OF ACCOUNT"—RIGHT OF DRAWEE BANK TO REFUSE TO PAY.

Question 277.—Has a bank any legal right to refuse payment of a cheque—or is there any custom to warrant their doing so, there being funds for the same—on which is interlined "Payment in full of account," or any similar wording?

Answer.—We do not think a bank has any right to refuse a cheque merely because it contains a statement of the purpose for which it is given. So long as it is an unconditional order on the bank to pay the money, they are bound by their customer's instructions.

CHEQUE BEARING THE WORDS "IN FULL OF ACCOUNT"—POSITION OF PAYEE.

Question 278.—A cheque payable to order contains the words "in full of account to date." If the cheque is used does this discharge the liability of the drawer to the payee of the cheque?

Answer.—If the payee notifies the drawer that he is not satisfied to accept the cheque in full of his claim, but only as a payment on acount, the phrase quoted would not affect the rights of the parties. If he receives the cheque without giving such notice, it would probably be held that he had settled the debt due by the drawer, for the amount of the cheque, and released him from any further claim.

CHEQUE DRAWN IN PAYMENT OF "BALANCE IN FULL TO DATE" AND ENDORSED "RECEIVED ON ACCOUNT ONLY"—POSITION OF DRAWEE BANK.

Question 279.—A cheque is presented bearing on the face of it a notation to the effect that it is issued in payment of "balance in full to date." On the back it is endorsed by the payees and above the endorsement is written "received on account only." In these circumstances would the bank be justified in refusing to honour this cheque on account of its endorsement?

Answer.—The bank on which the cheque is drawn may refuse it on account of the endorsement, but on the other hand, the bank under section 66 of the Bills of Exchange Act, may pay the cheque and still not be liable. The safer plan, however, would be to refer to the drawer.

CERTIFIED CHEQUE WITH WORDS "FULL SETTLEMENT OF ALL CLAIMS" RULED OUT BY THE ENDORSER—POSITION OF DRAWEE BANK.

Question 280.—B & Son, grocers, made an assignment. Later B issues a cheque in favour of C or order for $3. On the face of the cheque under the amount in the body of the cheque B writes: "Full settlement of all claims against B & Son." B has the cheque marked by his bank before handing to C. The cheque later comes duly endorsed through the clearing from C's bank to B's bank, the words "Full settlement of all claims against B & Son" having been ruled out. Are they liable in any way?

Answer.—The bank should pay the cheque on presentation. The clause referred to is not any part of the order to pay and its removal is not a "material" alteration.

NOTE.—In "Questions on Banking Practice," issued under the authority of the British Institute of Bankers (6th ed. Nos. 456 and 775), the following answers are given to similar questions:

"No. 456. The cheque being drawn as an unconditional order to pay money, no notice need be taken by the paying banker of the insertion or deletion of a memorandum in the body of the cheque as mentioned, but he would be quite justified in returning it in this case if he saw fit."

"No. 775. In our view the words 'in full settlement' may, as between the bankers and their customer, be considered as merely an addition to an instrument already complete, and as being addressed, not to the banker, but to the payee, in order to show upon what terms that complete instrument is to be received by him. It is no part of the ordinary duty of bankers to settle accounts between their customer and his creditors. While this is our view, we think the cheque is drawn in a form calculated to embarrass, and that the bankers would, for that reason, be justified, as between themselves and their customer, to whom alone they are responsible, in returning it. They probably would think it wiser to do so in most cases of this kind."

The point at issue has never been definitely and authoritatively settled and Maclaren (Bills, Notes and Cheques, 5th ed., p. 371), says the law both in England and Canada is in a very unsatisfactory condition. He is of opinion that the striking from a cheque such words as "in full of claim" would be a material alteration which would make the cheque void, and, being apparent, the bank would cash it only at the risk of being held liable.

CHEQUE WITH WORDS "INTEREST TO 31ST INST." SCORED OUT—POSITION OF DRAWEE BANK.

Question 281.—A brings in his cheque to us for $147 payable to B with the application of the money written in the body underneath the written amount "Interest to 31st inst. on your loan on S ½ 27-4-9 W." We certify or accept the cheque, which is forwarded by A to B. It is cashed by B, but he apparently scores out the words "Interest to 31st......"

and it comes home to us through the usual channels. We accepted it but brought the alterations to the attention of A. Is there any responsibility attached to our accepting return of the cheque with alteration made *re* application of money?

Answer.—(See answer to Question No. 280). A drawee bank has nothing to do with such a clause as is here indicated. The order to the bank is to pay a certain sum, and the consideration for it is a matter of settlement between the drawer and payee.

BANK DRAFT ACCOMPANIED BY INSTRUCTIONS TO WITHHOLD PAYMENT UNTIL SIGNATURE OF AN ENCLOSED RECEIPT IN FULL—DUTY OF BANK ON REFUSAL OF PAYEE TO SIGN RECEIPT.

Question 282.—A sends a bank draft payable to B, to B's bankers, together with a letter authorizing it to be paid only on signature by B of an enclosed receipt in full. B refuses to sign this receipt, and asks the bank to hold the draft. After holding a few days, the bank is requested by A to return the draft to him. What is the duty of the bank? Would they be liable to either party in either event?

Answer.—The duty of the bank, if it chooses to act in this transaction, is to carry out the instructions of A, whose agent it would be. The bank would be responsible to A for any breach of his instructions.

ACCOUNTS IN NAMES OF "A B, SHERIFF," AND "C D, TRUST ACCOUNT"—RIGHT OF A BANK TO CHARGE THERETO PERSONAL ACCEPTANCES.

Question 283.—If a draft is accepted by A B and C D individually, A B having an account styled "A B, sheriff," and C D a trust account, neither of them having an individual account, is it necessary for A B to accept it "A B, sheriff" and "C D, trust account," before the drafts may be charged to their respective accounts?

Answer.—It would not be safe for the bank to apply to payment of a draft accepted by A B and C D individually, effects deposited as stated, at all events without further authority than appears upon the face of the acceptance which *prima facie* is not to be considered as drawn against either of the accounts mentioned.

NOTES AND CHEQUES OF A CUSTOMER CHARGED AT MATURITY TO HIS SAVINGS BANK ACCOUNT WITHOUT SPECIAL AUTHORITY.

Question 284.—Would a bank be upheld in law in charging up acceptances and notes as they mature to a customer's account in the savings department, without special authority. The following clause is printed on the customer's pass-book: "No draft or cheque drawn against the within deposit can be paid unless such draft or cheque be accompanied by this pass-book."

Answer.—If the bank were the holder of a note made by a party who had funds in a savings bank account, it would certainly be justified in charging the note against that account by way of set-off, but if the bank were not the holder of the note, and it is merely presented at the bank because made payable there, we think that the ordinary relation of banker and customer with respect to a current deposit account (which gives to the bank implied authority to pay for the customer notes and acceptances which he has domiciled with it), would not apply to a savings bank account upon which the customer cannot, as a right, draw cheques in the ordinary way and which is not presumed to be used for payment of his notes and acceptances. Special authority from him would be required.

CHEQUE TORN ACROSS AND PASTED TOGETHER.

Question 285.—Would a bank be justified in refusing payment of a cheque which had been torn across and pasted together?

Answer.—Yes. Unless perfectly satisfied as to its *bona fides* because of the channel through which it comes, it should only pay the cheque after confirmation by the drawer. The openings for fraud which any other policy would afford are too obvious to need discussion.

RIGHT OF BANK TO SET-OFF AN OVERDUE NOTE OF A DECEASED DEBTOR AGAINST A DEPOSIT MADE BY HIS EXECUTORS SUBSEQUENTLY TO HIS DEATH.

Question 286.—A bank holds a promissory note of a deceased party. After the promissor's death his wife, having obtained letters of administration to his estate, causes through her agent to be deposited in the bank certain moneys in her name "Trust Account Estate of (promissor)." Can the bank retain funds so deposited against the note, or are they bound to honour cheques drawn on this account?

Answer.—We think the bank cannot retain the funds deposited by the agent of the administratrix against the indebtedness of the intestate.

To be the subject of set-off debts must be mutual, and in the case put the mutuality of the debts, without which there can be no set-off, does not appear to exist—the intestate and the bank never stood in the relation of mutual debtors to each other. The debt to the bank was contracted by the intestate, but the debt of the bank was never due or owing to the intestate. The administratrix by reason of a contract between her and the bank is the bank's creditor, but there is no contractual relation between her and the bank by which she is made the bank's debtor.

We do not overlook the fact that the intestate's note fell due after his death, but we cannot conclude that this circumstance alters the case. The intestate did and the administratrix did not contract the debt upon the note; the administratrix did and the intestate did not deposit the money in question with the bank.

JOINT AND SEVERAL NOTE PRESENTED AT THE BANK WHERE IT IS PAYABLE, AND WHERE ONE OF THE PROMISSORS HAS AN ACCOUNT IN FUNDS.

Question 287.—A joint and several promissory note made by three parties is presented at maturity at the bank where it is payable and where one of the parties has an account with sufficient funds at credit to cover the note. Should the bank pay the note and charge it to his current account?

Answer.—We think the bank ought not to pay the note on a customer's account without his instructions.

JOINT AND SEVERAL PROMISSORY NOTE—RIGHT OF A BANK AS HOLDER TO CHARGE TO ACCOUNT OF ONE OF THE PROMISSORS.

Question 288.—A bank holds the joint and several note of A, B & C payable on demand. Demand is made and the note dishonoured. Can the bank charge up this note to A's account, against A's wish, assuming that it is in funds?

Answer.—A dishonoured bill on which a bank's customer is severally liable can of course be charged against his account with the bank.

RIGHT OF BANK TO CHARGE OVERDUE NOTE AGAINST DEPOSIT SUBSEQUENTLY MADE.

Question 289.—A owes the bank $300, which is overdue. He enlists and sells his farm through B, who deposits $1,000 to the credit of A. The bank immediately charged up the amount due on A's note, leaving a balance of approximately $700 to A's credit. B then moved down to the ledger-keeper and presented A's cheque for $800 to be marked. Is the bank justified in refusing to mark A's cheque for B, on the ground of "Not sufficient funds?' Or did the bank act legally in charging up the note?

Answer.—The bank had a right to set off the balance due against the deposit. There is nothing illegal in the bank's action.

THE PAYEE OF A CHEQUE ENDORSES IT AND PRESENTS IT FOR PAYMENT. CAN THE BANK APPLY THE FUNDS UPON AN OVERDUE NOTE OF THE PAYEE WHICH IT HOLDS?

Question 290.—The payee of a cheque drawn to order endorses it and presents it for payment. Can the bank rightfully apply the funds upon an overdue note it holds of the payee? What if payee claims that funds for cheque are not his own? Would the drawer have any grounds for objecting or legal remedy against the bank for so treating his cheque?

Answer.—The committee have thought it well to refer the above questions to the counsel for the Association, Mr. Z. A. Lash, Q.C., and the following has been framed under his advice as to the law affecting the matter:

The questions involve some nice considerations. There are two aspects in which the matter may be viewed: first, the strictly legal one; second, the ethical one. Upon the latter, opinions of course may vary, and there is no rule for decision. We therefore refrain from expressing any opinion upon this branch, leaving each bank to decide for itself whether, under the particular circumstances which may surround the case, it would as a matter of ethics be justified in retaining the proceeds of the cheque.

With reference to the legal aspect, there appears to be no reported decisions expressly governing the case. The answer to the question as to the payee's rights against the bank, may, we think, be worked out in principle upon these lines:

Assume that the payee is the beneficial owner of a cheque. He presents it for payment. The bank accepts it in the usual way. This acceptance brings the payee into privity with the bank, and enables him to bring an action against the bank in his own name upon the cheque. If, therefore, instead of retaining the cheque and crediting the payee with the proceeds, the bank should hand back the accepted bank cheque to the payee and then refuse to pay it, the payee might bring an action against the bank for the amount. If he did so, what would be the bank's position? Clearly it could set off against such action the amount of the overdue note. If, however, the bank retains the cheque and claims to apply the amount upon the overdue note, what would be the payee's remedy? We think he could proceed in three ways:

(1) To sue in trover for the conversion of the cheque, or speaking less technically, he could sue the bank for damages because he had been deprived of his property, viz., the cheque. The amount of his damages in this case would be the value of the cheque. He could have no further claim.

(2) If the bank has appropriated funds to the payment of the cheque—for instance, if the teller had counted out the money and had told the payee that it was the money for the

cheque—he could probably sue the bank to recover the amount as money held by the bank for his use.

(3) He might possibly treat the possession of the cheque by the bank as his possession, and sue upon the acceptance.

If he took the last course, then the bank would, as above stated, have the right to set off the amount of the overdue note. If he took the second course the bank would have the same right, the demands in each case being liquidated. But, if he took the first course, the right of the bank to plead set off as such, would be extremely doubtful, because set off can only be pleaded where the demand to which it is pleaded is a liquidated demand or one capable of being ascertained by computation as distinguished from a demand where the amount must be ascertained by assessment or valuation.

But the bank's right would not in such a case, be confined to pleading set off. Under the practice of the courts in Ontario, where a defendant is allowed in his defence to set up by way of counterclaim any demands against the plaintiff, the bank could in its defence to the action counterclaim for the amount of the overdue note. It would, of course, get judgment upon this counterclaim, and even if the payee got judgment against the bank for the amount of the cheque as damages for its conversion, the practical result would be that the two judgments would be set off one against the other, and the only question involved would be one of costs.

If the cheque, though payable to the order of the payee, really belonged to some other person, it is, we think, clear that the bank would not have the rights above explained. It could not pay its own claim against the payee out of funds belonging to another.

Our space for this number of the Journal will not allow us to deal with the other question, viz., whether the drawer would have any grounds for objecting, or legal remedy against the bank for so treating his cheque. We will allude to this branch of the question in our next issue, and explain also the rights of the payee against the drawer.

NOTE.—Since this opinion was given the following judgments have been rendered:

"Where a customer gave a bank a bill of exchange to discount it had no right to keep the bill and apply the proceeds on his former indebtedness without his consent: *Landry* v. *Bank of Nova Scotia,* 29 N. B. 564 (1889)."

"If the holder of a cheque delivers it to a bank to be cashed that does not constitute a deposit, nor render the bank his debtor, and the bank has, therefore, no right to set off against the proceeds of the cheque a debt owing to it by the holder: *Rouxel* v. *Royal Bank of Canada,* 11 S. L. R. 218 (1918)."

CHEQUE PRESENTED FOR PAYMENT BY PAYEE, WHO IS A DEBTOR OF THE BANK.

Question 291.—The payee of a cheque drawn to order endorses it and presents for payment. Can the banker rightfully apply the funds upon an overdue note he holds of the payee's?

What if the payee claims that funds for cheque are not his own?

Would the drawer have any grounds for objecting, or legal remedy against the banker for so treating his cheque?

Answer.—In Question 290 we replied to the first portion of the above question, under the advice of counsel, and undertook to deal with the remaining clause later on. This we now do.

The right of the drawer of a cheque having funds at his credit, is to have the bank pay his cheque on presentation, and should the bank refuse to do so without proper excuse, the drawer would have ground for action against the bank, and would be entitled to recover substantial damages to be assessed by a jury, without proving actual damage as the result of the refusal to pay the cheque. If what took place between the bank and the payee of the cheque amounted to a refusal of payment, we think the drawer could complain and that the bank would be liable for damages for this refusal. Whether the bank refused or did not refuse to pay the cheque, would be a question of fact to be decided upon on the circumstances.

With reference to the position of the payee as against the drawer of the cheque the decisions are reasonably clear. *Prima facie* the cheque is not given nor accepted as payment of a debt. It is a mere order on the bank to pay, and if not honoured the debt remains, and the payee can sue the drawer for it. But there is of course nothing to prevent the drawer and the payee agreeing that the cheque should be taken as payment, and if it were so taken the debt would be discharged, and in such a case if the cheque should be dishonoured, the payee's remedy is upon the cheque only and not upon the debt. If the bank refused to pay the cheque and if there were no agreement that it was accepted in payment of the debt, then the payee could sue the drawer of the cheque for the debt.

Such a state of facts could be imagined which would amount to payment of the cheque so far as the drawer is concerned, and which would entitle the bank to retain the money and set it off as against the debt owing to it by the payee; for instance, if the teller actually counted out the money and told the payee that it was the money for the cheque, and if the payee assented to this appropriation. But for practical purposes the inference which would no doubt be drawn by a court or jury in nine cases out of ten would be that the payee had not assented to the appropriation and that payment of the cheque had in effect been refused.

RIGHT OF A BANK TO SET OFF A BALANCE AT CREDIT OF A CUSTOMER'S ACCOUNT AGAINST A MATURED NOTE ON WHICH THE LATTER IS AN ENDORSER OR PROMISSOR.

Question 292.—A bank's customer dies leaving a balance at credit of his account, which is believed to be his own money. Can the bank set off against this balance the amount of two notes on which he is promissor or endorser, one of which had matured at the time of his death, and the other matured shortly afterwards?

How would it be if it were shown that although the account was in his own name the money was trust money?

Answer.—If the facts are as indicated in the first question above, the bank has the right to set off the liability as promissor or endorser on matured paper against its customer's deposit.

As to the second question, if the account stood in the customer's name simply, although the moneys were trust funds, the rule would seem to be that unless the bank had knowledge of the trust it could still exercise the right of set-off.

APPROPRIATION OF PAYMENTS.

Question 293.—M & Co. are in the habit of discounting with their bankers sight drafts against shipments of produce to the United States. One of the drafts for $75, was returned dishonoured and charged to the account of M & Co., increasing their overdraft to $150. Some time afterwards the firm sent the bank for discount their note for $100, endorsed by another party, and the proceeds of this note were remitted by the bank to M & Co. When the note fell due the firm sent the bank $100 to take it up, but the bank credited the amount instead to the overdrawn account and protested the note. Would the bank have recourse to the endorser?

Answer.—Upon the statement that the $100 was sent the bank to pay the note, the bank would have no right to apply it upon the other debt. The debtor has the right, when paying money, to appropriate it to any indebtedness which he may specify, and the creditor cannot change the appropriation without the debtor's consent. Therefore the note of $100 must be regarded as paid and the endorser discharged.

On the general subject of appropriation of payments the case *In re Exchange Bank; The Queen* v. *Ogilvy,* will be found instructive. (Journal, Vol. 5, p. 258).

CHEQUE TO THE ORDER OF "SAM. JONES"—MAY THE BANK PAY TO ANYONE OF THAT NAME?

Question 294.—If a cheque is drawn in favour of Sam. Jones without any further description of payee, can the bank pay the money to any Sam. Jones, or is it the bank's duty to find out to which Sam. Jones the cheque belongs?

Answer.—The bank would we think be responsible if it paid the money to anyone other than the Sam. Jones to whom the cheque belongs.

BANKING HOURS.

Question 295.—Is it optional with a bank to close at one o'clock on any other day than Saturday, in lieu of the latter day? Do not the provisions of the Bills of Exchange Act respecting the hours at which bills may be protested impose a duty on the banks as to the hour up to which they must keep open.

Answer.—Were it not for the peculiar relationship between a bank and its customers, whereby it undertakes to make payments on their account out of the moneys in its hands on presentation of cheques, it might be said that a bank is free to close its doors at any time that it may choose, but the fulfilment of this undertaking doubtless requires that a bank should be open at the usual hours unless it give reasonable notice to the contrary. But such notice having been given, we think it is clear that a bank may arrange to close on any day of the week at 1 o'clock, and we know that it is not an uncommon practice in the old country for banks to have their offices in small places open only on a certain day or certain days of the week.

As regards the Bills of Exchange Act, this has no bearing on the matter except so far as the hours fixed for the protesting of notes may be taken as indicating what is recognized to be the general practice as to the hours for keeping open. The Act, however, so far as this point is concerned, only refers to the hour before which a note cannot be protested—*i.e.*, 3 o'clock, and that this does not affect banks directly is quite plain. Banks usually close at 3, and although the practice of admitting notaries after 3 is a general one, we do not *think that if the notary found the office locked,* and protested a bill for non-payment, the bank would be under any responsibility in the matter. The most that could be said is that they had impliedly undertaken to be open till 3 o'clock on certain days of the week to make payments on behalf of their customers.

NOTE.—By section 1 of 8-9 George V., chap. 9, it was enacted that during the war, and for one year thereafter, the time of protest should be changed from 3 p.m. to 2.30 p.m.

PROTEST OF INLAND BILLS NECESSARY ONLY IN THE PROVINCE OF QUEBEC.

Question 296.—Section 113 of the Bills of Exchange Act reads: "It shall not, except in the Province of Quebec, be necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers." What does this section mean? Is it necessary to protest any bill to hold an endorser?

Answer.—Protest as regards inland bills is necessary only in the Province of Quebec (section 113) and as regards foreign bills is necessary in all the provinces (section 112), but as notice of dishonour is required to preserve recourse against the drawer and endorsers and protest is probably the best evidence of such notice, the usual and safest practice is to protest dishonoured items unless specially instructed to the contrary. Protest is unnecessary in Quebec or any other province when the circumstances are such as would dispense with notice of dishonour. (See sections 114, 106 to 108 and 96).

NOTICE OF DISHONOUR.

Question 297.—Referring to the Bills of Exchange Act, section 98 (c) and (d), read as follows: "By an agent either in his own name or in the name of any party entitled to give notice whether that party is his principal or not." "In writing or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment." A bank holds a cheque sent to it for collection. This cheque is dishonoured by non-payment. By the above clause cannot a bank send out notice of dishonour itself instead of having a notary protest the cheque?

Answer—Yes. Unless specially instructed to do so or unless the bill is a foreign one or payable in the Province of Quebec a collecting bank is not required to protest a dishonoured cheque. Protest is also unnecessary in cases where notice of dishonour is dispensed with (see sections 114 and 106 to 108, Bills of Exchange Act). The immediate return of the cheque by the collecting bank would be sufficient notice of dishonour (section 99), but as the Act allows the bank to protest if it sees fit (section 113) it is always safer to follow the established practice particularly as the protest affords *prima facie* evidence of presentation and dishonour, and of the service of notice thereof.

NOTICE OF DISHONOUR MUST BE GIVEN TO DRAWER.

Question 298.—Is it necessary, if a draft be drawn by A on B to the order of bank C, that notice of dishonour be given to the drawer to render him liable?

Answer.—Such a notice is necessary; see sec. 96 Bills of Exchange Act. Please note that protest is not necessary, except in the Province of Quebec, or for foreign bills. What the Act requires is notice of dishonour, which might be given either by a notary or by the holder or anyone on his behalf.

UNPAID BILL CHARGED TO ENDORSER'S ACCOUNT WITH NOTICE TO HIM, BUT WITHOUT PROTEST.

Question 299.—Is not a banker justified in charging an unpaid bill to the endorser's account, provided there are funds, without first protesting it, if he notifies the endorser by mail that he has done so, and would not such notice act as a notice of dishonour within the meaning of the Bills of Exchange Act?

Answer.—Except in the Province of Quebec the bank would certainly be entitled to charge the endorser's account without protest with a dishonoured bill, provided it notifies the endorser that the bill is dishonoured. Whether or not the notice mentioned was sufficient for this purpose would depend on its terms. If the letter is so framed as to indicate that the bill has been dishonoured by non-payment this notice is sufficient. (See section 98, sub-sec. 1 (d), Bills of Exchange Act). It is probable that a mere statement in the letter that the bill had been charged to the customer's account would be held to sufficiently indicate its dishonour.

WHEN IS A BILL PROTESTABLE?

Question 300.—At a point occupied by a chartered bank only every other day, is the day next the maturing date of a bill the proper date to protest for non-payment when the due date falls on the day the bank is not open for business, or in other words, are the days when the bank is not open to be treated as a statutory holiday and protest the day following binding?

Answer.—The bill is protestable only on the day of maturity.

BILL RECEIVED FOR COLLECTION WITH "NO PROTEST" SLIP ATTACHED — NO INSTRUCTIONS IN ACCOMPANYING LETTER.

Question 301.—A bill received for collection has a "no protest" slip attached, but in the letter enclosing it no reference is made thereto. Should not the letter govern?

Answer.—We think not. The slip accompanying the bill should be regarded as properly sent unless the letter showed the contrary. We think the bank in the case put should be careful to return the bill before the close of business on the next day, and then no interests would be injured by returning the bill without protest. The party receiving back a dishonoured bill is in a position to give notice to the prior parties, and so keep everybody on the bill liable to him. This would not, however, apply to the Province of Quebec, where protest is necessary.

DRAFT WITH DRAWEE'S ADDRESS WRONGLY GIVEN—PROTEST.

Question 302.—A draws upon B in Rossland by mistake; he should have drawn on him in Nelson, where he has a place of business and a residence. The item is sent forward to

Rossland, subject to protest for non-acceptance. Draft is returned protested for non-acceptance. Inasmuch as the drawee has no place of business or residence in Rossland, and the draft was never presented to him, where are there any grounds for protest?

Answer.—It would seem clear that the bill must be regarded as dishonoured by non-acceptance, and it was the holder's duty, in view of the instructions quoted, to protest the bill. The matter works out in this way:

If after the exercise of reasonable diligence presentment cannot be made to the drawee or to some person authorized to accept or refuse acceptance on his behalf, presentment is excused (79 (b)), and the bill may be treated as dishonoured by non-acceptance (79 (1)). The holder of a bill dishonoured by non-acceptance may, if he thinks fit, protest the same (section 113). In this case the agent of the holder was instructed to protest, and would not have acted in accordance with his duty if he had returned the bill without protest.

PRESENTMENT FOR PAYMENT BEFORE PROTEST — REASONABLE TIME.

Question 303.—An acceptance held by Bank A is payable at Bank B. Being unpaid at close of business on the date of maturity Bank A hands the bill to a notary for protest. The notary delays presentation until 4.30 p.m. and finds the officers of Bank B have left for the day, the payee having in the meantime provided for the payment of the bill. Can the notary protest the bill; or if he merely "notes" it, can he collect the usual notarial fee? What would be the proper course for the banks to take under such circumstances?

Answer.—This question raises some important points, regarding which we have thought it well to get a memorandum from the Counsel of the Association, which is appended hereto.

The effect of the view which Mr. Lash takes in the case put by our correspondent is as follows:

The notary under the circumstances mentioned could not be said to have made a presentation at all, and the protest must therefore be made on the strength of the presentation which we assume was made earlier in the day by Bank A at Bank B. It is not necessary that the presentation should be made by the notary, although it is clearly an advantage that he should make it, as that simplifies the proof in case of dispute afterwards. Of course, if a notary presents a bill after banking hours and finds someone who is authorized to pay or refuse payment, such a presentation is valid notwithstanding the hour.

As regards noting, if the notary notes the bill instead of protesting it, he is entitled to whatever is the usual fee for noting and sending out the notices of dishonour, but we do not see that this has any bearing on the question as to the effect of the delay in presentation.

TIME WITHIN WHICH PRESENTATION FOR PAYMENT MUST BE MADE.

(*Opinion of Counsel.*)

The question as to the time during the day of maturity when a bill must be presented for payment does not appear to have come up for decision in Ontario.

The cases in England on the subject are all old ones. The section of the English Bills of Exchange Act now sets the question at rest there, as it declares that presentment must be made "at a reasonable hour on a business day" at a proper place, etc. The corresponding section of the Canadian Bills of Exchange Act is as follows:

"86. When the bill is not payable on demand (presentment must be made) on the day it falls due.

"87. Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined and either to the person designated by the bill as payer, or to his representative or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found."

The section relating to the presentment for acceptance is as follows:

"78 (a). The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue."

It will be observed that this section contains the words "at a reasonable hour on a business day." The absence of these words in section 86, and the statement in that section that presentment for payment must be made on the day the bill falls due, leaves the question open for argument—the argument being that, as nothing is said as to the time of the day for presentation for payment, the holder has the whole day for presentment.

We think, however, that inasmuch as section 87 requires presentment to be made at the proper place either to the person designated by the bill as payer, or some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person could there be found, presentment for payment must be made at a reasonable hour, otherwise it could not be said that reasonable diligence had been exercised to find the proper person at the proper place to whom the bill could be presented.

In *Parker* v. *Gordon,* 7 East, 385 (A.D.) 1806, Lord Ellenborough said:

"If a party choose to take an acceptance payable at an appointed place, it is to be presumed that he will inform himself of the proper time for receiving payment at such place, and he must apply accordingly."

In this case the bill was made payable at a banker's, and it was not presented until after six o'clock p.m., when the bank was shut and the clerks gone away.

In the same case LeBlanc, J., said:

"If a party will take an acceptance in this manner, payable at a banker's, he must present it at a proper time, according to the known method of conducting business, otherwise the greatest inconvenience would ensue."

A new York case, *Utica* v. *Smith,* 18 Johns, N.Y. 230, is instructive. In that case a note was payable at the Mechanics' Bank, New York City, and was presented at 3.15 p.m. The bank closed at three o'clock, but it was customary for clerks to remain after that hour during which notes were presented and paid or refused. The court said, "though the presentment was out of banking hours, it is sufficient if there was a person at the bank authorized to give the holder an answer."

The result of a number of American cases is given in the American and English Encyclopædia of Laws, 2nd edition, vol. IV., page 370, as follows:

"Where a bill or note is payable at a bank, it must be presented for payment before the usual hour of closing the banking house."

We think these authorities would be followed in Canada.

Section 10 of the Bills of Exchange Act declares that the rules of the common law of England, including the Law Merchant, save in so far as they are inconsistent with the express provisions of the said Act, as amended, shall apply.

The English cases referred to show what the rule of the common law of England on the subject was, and we think it cannot be said that such rule is inconsistent with the express provisions of the Act. On the contrary, we think it consistent with it.

NOTE.—In Quebec it has been held that presentation at the closed doors of a bank after its usual office hours was not sufficient upon which to base a protest: *Watters* v. *Ruffenstein* (1866), 16 L. C. R. 297.

The English rule has been stated as follows: "If a bill be payable at a bank it must be presented within banking hours; if at a merchant's place of business then within ordinary business hours; if at a private house presentation up to bed-time would be sufficient.

RETURN BY COLLECTING BANK OF UNPAID BILL, AFTER MATURITY, IS NOTICE TO THE SENDING BANK THAT IT HAS BEEN DISHONOURED.

Question 304.—Accepted draft made by A to his own order, endorsed in blank, handed to B, who endorses over to S bank, who forwarded it to bank R without instructions. Was unpaid on due date and returned to S bank the same day. Bank S refuses to take it back, saying the endorsers are released because the item was not protested. As this was neither a foreign nor Quebec bill, it having been accepted payable in another Province, bank R claims that all bank S needed to have done to hold the endorsers was to have notified them on recipt of the item, and, in fact, should have done this, as the mere fact of the bill being returned without being marked "protested" would show them it had been neglected.

Answer.—Bank R is right. See sections 99 and 100 Bills of Exchange Act.

TIME WITHIN WHICH NOTICE OF DISHONOUR MAY BE SENT.

Question 305.—Referring to the section 103 (2) Bills of Exchange Act, do notices of dishonour mailed at any time on the next day following due date, meet the requirements of the law as fully as if mailed on the same day a bill is dishonoured?

Answer.—Yes; the notice is "valid and effectual" if mailed on the following business day, and all that is needed is a valid and effectual notice.

"NOTING" DISHONOURED BILLS.

Question 306.—(1) A bank hands a dishonoured bill to their notary for noting, pending an expected settlement in a few days. (*a*) Should notary attach long declaration of noting in accordance with form A in the schedule to the Act, or simply endorse a memorandum of date and ledger-keeper's answer referred to in Smith's Merc. Law, 3rd Am. ed., p. 328? Maclaren, at p. 310, 5th ed., would suggest the short memo., but Smith says, this "*per se* is of no legal effect." (*b*) In either case should notary send notices to the parties on the bill?

(2) Is there any sufficient sanction for the practice of protesting a bill before 10 a.m. of the day succeeding the day of dishonour as the day of dishonour — that is to say, noting and protesting it, the bank having, say, overlooked it the day before?

Answer.—(Not applicable in the Province of Quebec nor to foreign bills).

(1) We think it ought to be clearly understood that noting a dishonoured bill does not enable the bank to hold the parties to it liable pending an expected settlement in a few days. The parties are held liable only if notices of dishonour are sent in accordance with the provisions of the Act.

The practice in regard to "noting" usually amounts to the notary presenting the bill for payment on the day of maturity, and taking no further steps until the close of business the following day, by which time the note may be paid. If notice of dishonour is not given within the proper time the noting is of no effect. The only case in which evidence of the noting is needed is one where the presentment is made by one notary, and the protest has for any reason to be completed by another. Form A in the first schedule would be useful in such a case, but any memorandum showing that the bill had been presented at the place of payment on the day it matured, and the answer received, would be sufficient.

(2) We do not think there is such a practice, and if there were it would not be valid. The holder may give notice of dishonour on the day after the bill matures (sec. 97 (*a*)), and he may employ a notary to give this notice on his behalf (sec. 97 (*b*)), but if he invokes the aid of the notary for this purpose on the day after maturity that would not enable the latter to "protest" the bill. As the practice of the results of the notice of dishonour are identical with those following a protest, this involves no disadvantage. Similarly the effect of absence of evidence of noting, where for any reason the notary who presented the bill cannot complete his work, may be obviated by notice being given by the holder, or someone on his behalf, on the day following the date of maturity.

ACCEPTANCE HELD AFTER MATURITY BY REQUEST OF PRIOR PARTIES—PROTEST.

Question 307.—An acceptance is by arrangement with the prior parties held for ten days after its maturity without being protested, but at the expiration of that time the drawee is still unable to pay. Is it necessary to then protest the draft in order to avoid releasing the drawer or endorser?

Answer.—Assuming the bill to be an inland one, no protest is necessary. Notice of dishonour, to be effective, must be given not later than the day after maturity, and the holding of the bill by agreement for ten days does not alter this. If the "arrangement" amounted to a waiver of notice, or an admission of the receipt of notice of dishonour (which it no doubt did) the parties continue liable on the bill whether asked to repay it or not. They would only be discharged from this liability, under ordinary circumstances, by the Statute of Limitations (or payment).

BILL HELD AFTER MATURITY BY COLLECTING BANK AND NOT PROTESTED ON INSTRUCTIONS OF OWNER.

Question 308.—A Winnipeg bank negotiates a draft drawn by one of its customers on a house in Kingston, and sends it to a bank in Kingston for collection. At maturity, the Winnipeg bank wires the Kingston bank, "Hold free seven days if not paid." The Kingston bank has a running account with the Winnipeg bank, and if the bill were paid would simply credit the amount without advice. The Kingston bank holds the bill without protest for seven days after maturity, in accordance with telegraphic instructions, but without advising or acknowledging the telegram.

If the bill is still unpaid at the end of seven days ought it to be protested, and is the drawer entitled to the same notice of non-payment at the end of the seven days as he would have been at maturity?

Answer.—The bill could not be protested at the end of the seven days, the time for that being past. The duty of the Kingston bank is to return the bill to the Winnipeg bank at the expiration of the seven days, or to notify it then that the bill has not been paid. If it neglected to do this, and the Winnipeg bank was misled into believing thereby that the bill was paid, and allowed the drawer to act in the same belief, the Kingston bank would probably be bound to give the Winnipeg bank credit for the bill.

JOINT AND SEVERAL NOTE—PROTEST—MAKER'S RIGHT AS SURETY.

Question 309.—A, for B's accommodation, joins with the latter as joint and several maker of a note in favour of C. At the time of its delivery to C the latter has notice of the relation to which A and B stand to each other. B. does not meet the note at maturity. Is it necessary in order that C may preserve his rights against A that A should have notice of dishonour?

Answer.—It is not necessary that A should have notice of dishonour in order to preserve C.'s right to recover from him. A has the ordinary rights of a surety, but not of an endorser, and his liability to pay the note continues without notice of dishonour, because he is a promissor thereon.

PROMISSORY NOTE WITH JOINT AND SEVERAL MAKERS, ONE OF THE MAKERS BEING REALLY A SURETY FOR THE OTHERS—PROTEST.

Question 310.—Is it necessary to protest a note drawn in favour of a bank by joint and several promissors, one of whom is really a surety for the other; is he not in effect an endorser?

Answer.—It is not necessary to protest such a note. The contract of the makers of a note is to pay the note without any conditions, and it is their duty to find it and pay it. If a party promises to pay who is in fact a surety, his obligation is that of maker, so far as notice is concerned, but in other respects he is entitled to the rights of a surety; *e.g.*, he might be discharged by any improper dealing with securities.

NOTICE OF DISHONOUR—MAKERS OF A NOTE WHO ARE ALSO ENDORSERS.

Question 311.—Is it necessary to send notices of dishonour to the endorsers of a note on which they are also the promissors?

Answer.—They would be held as makers of the note without notice of dishonour. As no additional obligation is represented by the appearance of their name also as endorsers, nothing would be gained by the notification, from a legal standpoint.

NOTE WITH TWO ENDORSERS, THE LAST OF WHOM WAIVES PROTEST — MUST BE PROTESTED TO HOLD PRIOR ENDORSER.

Question 312.—A note is discounted by a bank for a customer who endorses it, waiving protest, notice and demand of payment. There is a prior endorser on the note. The bank did not protest the note at maturity, and the first endorser was released. Is its claim against its customer good? He alleges that notwithstanding his waiver the bank should have protested the bill in order that he might not lose his recourse against the prior endorser, and that he is discharged by their neglect to do this.

Answer.—The bank has no claim against its customer. Failure to protest the bill freed the endorser who waived protest for himself, because it deprived him of his recourse against the prior endorser.

DEMAND DRAFT WITH BILL OF LADING "FOR PAYMENT" —GOODS DELAYED IN TRANSIT — NOTICE OF DISHONOUR.

Question 313.—A demand draft with bill of lading attached, to be held for payment, is received for collection. The goods, owing to delay in transit, will not arrive for three weeks, and the drawee refuses to pay until the goods arrive. No instructions have been given to hold the draft. Is the collecting bank excused from protesting it?

Answer.—The drawer would be discharged if the draft were held over without notice of dishonour being given him, and the collecting bank would be responsible for the bill.

CHEQUE RETURNED MARKED "N.S.F."—PROTEST.

Question 314.—Bank A receives a protestable cheque drawn on bank B from bank C for collection. If the same is presented to bank B and refused on the ground of "N.S.F." or "Present again," is it necessary to wait until three o'clock or one o'clock on Saturdays to protest same?

Answer.—The cheque cannot be protested before three o'clock on any business day, including Saturday. See section 121 (*b*) Bills of Exchange Act. If the notary has already presented the cheque for payment during business hours, and it has been refused, it is not necessary to present it again after business hours before protesting, but it is customary to do so, and it is undesirable, without special reason, to depart from this established custom.

HOUR AT WHICH NOTE MAY BE PROTESTED.

Question 315.—Is it legal to protest a note at one o'clock on Saturday? Are we not bound to wait till three as on other days?

Answer.—A protest cannot be made on any day till three o'clock. This does not in any way conflict with the bank's right to close its doors at one o'clock. The notary might present a cheque at ten in the morning, and, if then dishonoured, he would do his full duty, if he simply held it till three o'clock and thereafter completed the protest without further presentation.

DISHONOURED CHEQUE—TENDER OF PAYMENT BY DRAWER BEFORE PROTEST.

Question 316.—Bank "A" sends to bank "B" through the Clearing a cheque which is returned on time with reason "N.S.F." Bank "A" presents the same cheque at three o'clock, when it is again refused for the same reason. The cheque is subject to protest. The drawer goes to bank "B" after 3 o'clock to make a deposit, but the bank refuses to take it. The drawer, wishing to save the protest, then goes to bank "A" and offers money to pay the cheque. Is bank "A" obliged to accept the money and deliver the cheque?

Answer.—Bank "A" is entitled to protest the cheque at any time after 3 o'clock, but if the cheque has not already gone to protest, there would appear to be no reason why payment should not be accepted from the drawer.

"NO PROTEST" INSTRUCTIONS IN LETTER ENCLOSING A NOTE, BUT NOT ATTACHED TO NOTE ITSELF.

Question 317.—A letter is sent containing a promissory note for collection, with instructions not to protest, but such instructions are not attached to the note. Should the latter be protested or not?

Answer.—The instructions in the letter should clearly be followed. There can be no doubt whatever as to the intention of the party sending the note when he gives his instructions in this shape.

Our reason for suggesting that precaution should be taken where the instructions were only in the form of a slip attached was the possibility that a slip belonging to some other bill might have been attached in error. The collecting bank in such a case would be free from responsibility and the precaution would be merely an act of consideration.

CHEQUE, WITH ENDORSER, RETURNED MARKED "N.S.F."—PROTEST.

Question 318.—Bank A clears to bank B a cheque on August 28th, 1918. Bank B returns cheque for the reason "N.S.F." Bank A's endorsement stamp on this cheque is dated August 27th, 1918. Can this cheque be legally protested? Suppose bank B claims that the cheque should have been protested on the day that is on bank A's endorsement. What is the position of bank A to the endorser of the cheque?

Answer.—If bank A receives cheque on deposit on 27th August, and presents it on 28th, it certainly is using ordinary diligence, and as far as bank A is concerned protest on 28th would enable it to hold the prior endorser.

FORM OF NOTICE OF DISHONOUR.

Question 319.—Is a notice of dishonour mailed by a bank to an endorser of an inland bill (Quebec excepted) on due date, properly attested by two officers and a record of despatch kept, sufficient without protest to hold the endorser?

Answer.—Yes. Provided the notice identifies the bill as called for in section 98 of the Bills of Exchange Act. See also sections 97 and 113.

NOTICE OF DISHONOUR SENT TO ENDORSER BY LETTER.

Question 320.—Would notifying an endorser by registered letter that a note had not been met by his promissor and that he was looked to for payment, hold him the same as if the note had been duly protested?

Answer.—Any notice of dishonour properly given holds the endorsers, but in the case of bills payable in the Province of Quebec, and foreign bills, protest is necessary. All that is necessary in a notice of dishonour sent by mail is that it should be "duly addressed and posted" (see section 104 Bills of Exchange Act); registering the letter does not affect the matter.

CHEQUE MADE PAYABLE AT ONE BANK CASHED AT ANOTHER BANK BY PAYEE, WHO ENDORSED IT—PAYMENT STOPPED BY THE DRAWER—NOTICE OF DISHONOUR.

Question 321.—A teller cashed a cheque in an Ontario town drawn on a bank in Toronto. The cheque was sent for collection, but was returned without being protested, marked "Payment stopped." The payee of the cheque, who endorsed it, refuses to take it up. Can he escape on the ground that the cheque was not protested?

Answer.—If notice of dishonour were given and presentation and demand for payment made within the time prescribed by the Act, the payee cannot evade the obligation. Proper notice only is necessary, and protest is not essential, except in Quebec.

CHEQUE PRESENTED THREE TIMES AND RETURNED ENDORSED "N.S.F."—NOTICE OF FIRST DISHONOUR.

Question 322.—A cheque signed by A P to order of P B on bank "A" is presented to P. B's bank and negotiated. The cheque is sent through the clearing house without instructions and is returned by bank "A" without protest and endorsed "N.S.F." The cheque is presented three times and always refused for the same reason "N.S.F." Then P B's bank gives special instructions to have it protested. What is the value of the protest and has P B's bank the right to claim the amount of the cheque and fees from its customer P B? Is not bank "A" responsible?

Answer.—The protest is only of value as affording evidence of presentation and dishonour. P B's bank can claim the amount of cheque and fees from P B, provided the notice of first dishonour was given him in due course. Bank "A" has no responsibility in the matter.

THE MAKER OF AN ENDORSED NOTE ASSIGNS HIS ESTATE FOR THE BENEFIT OF CREDITORS—SHOULD THE NOTE BE PROTESTED WITHOUT WAITING FOR MATURITY?

Question 323.—The maker of a note (discounted for a customer-payee) becomes insolvent. The note is not yet due, and has another endorser who has lent his name as surety for the maker. Should the note be protested as soon as the assignment is gazetted? Or should no action be taken till maturity?

Answer.—Nothing can be done until the note matures and is dishonoured.

Note.—In the province of Quebec the maker of a note who becomes insolvent cannot claim the benefit of the unexpired term and the note becomes immediately due so far as he is concerned. It must be protested, however, in order to hold the endorsers, whose liability would only commence from the date on which the note by its terms became due and payable. See *Trottier* v. *Rivard,* Q. R. 23 S. C. 526 (1903).

In other provinces the collecting bank should at once notify the sending bank of the insolvency of the maker in order that a special claim may be made against his estate under section 50 of the new Bankruptcy Act.

BILL HELD FOR COLLECTION — ASSIGNMENT OF DRAWEE BEFORE MATURITY OF BILL—PROTEST.

Question 324.—Bank A sends for collection to bank B, draft or note (to be protested in case). Drawee or maker assigns before maturity. What would be the position of bank B to bank A on the following points:

(1) Should draft or note be returned by bank B on the assignment becoming known?

(2) If so, may not protest be waived to save unnecessary cost under the circumstances?

(3) Would it be correct to simply advise bank A of the assignment, asking for instructions, or what option has bank B in the matter?

Answer.—(1) We think that the duty of bank B is to protest the note at maturity and return it, in the absence of other instructions.

PROTEST—ERROR IN THE NOTICE AS TO PLACE OF PRESENTMENT.

Question 325.—A note payable at bank B was handed to the notary by Bank A for protest. It was duly presented, and notice of dishonour given in the ordinary from. In the Act of Protest attached to the note the notary, through error, declared that he had presented the note "at Bank A, where the same is payable." Does this invalidate the protest?

Answer.—The act of protest is merely a certificate as to what the notary has done, and could be corrected at any time. The notice of dishonour having been duly given, the parties would be liable without any further action on the part of the notary. He attaches his notarial act merely as a convenient mode of proving that the notice has been duly sent, but proof of the notice might be made in any other way.

In answer to a further inquiry on the subject:

If in the notice of dishonour it was stated that the note had been presented at Bank A while really payable at Bank B, that would not necessarily invalidate the notice. Such an error might be regarded as a misdescription of the bill, but the notice would not be vitiated thereby unless the party to whom the notice was given was in fact misled by it. (Section 98 (2)).

It is to be observed that the Act does not require a statement in the notice of dishonour that the bill was presented at the place where payable. See form "G" and "H" in the first schedule to the Act.

CHEQUE PRESENTED FOR PAYMENT, PLUS PROTEST FEES—DUTY OF DRAWEE BANK.

Question 326.—A cheque is presented at a bank for payment and is dishonoured for reason "N. S. F.," and protested. Later funds are provided sufficient to cover the cheque, and protest fees, and the cheque is again presented. Should the drawer bank pay the cheque for face amount only, or for the amount, plus protest fees?

Answer.—Section 113 of the Bills of Exchange Act allows a holder to protest a cheque if he sees fit, and section 124 provides that the expense of protesting shall be paid to him, but as the duty of the drawee bank is to comply with the order of the drawer it is not required to pay more than the face value of the cheque without instructions from the drawer to do so. See also sections 134 and 135.

CHEQUE DRAWN FOR "CAPITAL AND INTEREST"—PROTESTED WITHOUT INSTRUCTIONS.

Question 327.—A cheque drawn upon a bank for "capital and interest" in favour of another bank, which forwards it for collection to the drawee bank omitting the usual "N. P." in the instructions, is protested because there is no account. Is such a protest justified on the part of the drawee bank?

Answer.—It is open to question whether an item of this nature is for a sum certain in money within the definition of a bill of exchange. If it is a cheque properly speaking, the drawee bank is within its rights in protesting. If it is not a cheque, the drawee bank would still be within its rights in protesting, though the protest charges would probably not be collectible as part of the bill.

CHEQUE HANDED TO NOTARY FOR PROTEST AND LOST BY HIM —RESPONSIBILITY OF PRESENTING BANK.

Question 328.—What responsibility does a bank assume in handing a cheque or note to a notary for protest if he should destroy or lose it?

Answer.—Since the notary is the bank's selected agent for presentation and sending notice of dishonour, the bank would be liable for his laches. But demand for payment may be made and notice of dishonour sent on a copy of the bill or written particulars. (See sections 120, 156 and 157, Bills of Exchange Act.)

NOTARIAL CHARGES.

Question 329.—Can you inform me what the legal notarial charges are in connection with the protesting of notes in the various provinces? There seems to be a wide range of difference among them.

Answer.—The tariff of notarial charges in the various provinces will be found in Maclaren's "Bills, Notes and Cheques," pp. 320 and 321, 5th ed.: They are too voluminous to be quoted here.

FEE FOR "NOTING."

Question 330.—Can a notary "note" a bill on due date and complete the protest next day, charge all the usual protest charges and an additional charge of fifty cents for noting as well?

Answer.—No. In such a case it is not the custom to make an additional charge for noting. An examination of the various provincial tariffs will reveal the fact that no provision is made for a fee for noting, and that when the noting and protesting are in reality one transaction a double charge is not intended. Section 57 of the Imperial Bills of Exchange Act only provides for one charge in such a case as you mention. See also section 124 of our Bills of Exchange Act.

NOTE HELD AS COLLATERAL ALLOWED TO RUN PAST DUE WITHOUT NOTICE TO ENDORSER.

Question 331.—Is a bank responsible for a note deposited with it as collateral if it (having an endorser) is allowed to run past due without the endorser being notified of dishonour, or allowed to become outlawed by no action being taken for six years?

Answer.—As holder of the collateral security the bank is bound to exercise reasonable care in reference to it, and to the realization of it. Therefore if, by reason of its neglect to notify the endorser, or to get judgment on the note before it became outlawed, the debtor to the bank, or true owner of the note, suffered damage, the bank would be responsible. If the bank were willing to sue on the note before it became outlawed, provided the debtor furnished the money required for costs, and if the debtor refused to do this, the bank would not be bound to sue, but the debtor should be given an opportunity of protecting his interest in the note.

NOTE ENDORSED BY B WITH WAIVER OF PROTEST PAID BY B AT MATURITY, MARKED "PAID" BY HOLDER, AND AFTERWARDS RE-CIRCULATED BY B.

Question 332.—A makes note in favour of B. B endorses same and waives protest, etc. At maturity B has to pay note and the bank places their "paid" stamp on the back of the note over B's endorsement. B afterwards circulated the note apparently as cash, and eventually (three or four years after maturity) has been called upon to pay same but refuses. Is he still liable as endorser?

Answer.—The payment by B is not a payment of the note so as to extinguish all liability upon it, and evidence would be admissible to show that the stamp "paid" meant paid or retired by the endorser only. If B himself, as the question states, afterwards negotiated the note, there could be no question that he would be liable as endorser, but the holder would of course take it subject to the equities which might attach to the note as an overdue note when he became the holder. See section 70, and section 73 of the Bills of Exchange Act.

PRESENTATION WITHIN A REASONABLE TIME—BILL SENT FOR COLLECTION IN AN INDIRECT MANNER.

Question 333.—A bank in Kingston cashed for a customer, who endorses it, a cheque payable in Sault Ste. Marie, where it has no branch. It sends it to its Toronto branch, which turns it over to a bank having a branch at that point. The cheque is dishonoured and returned through the same channel to Kingston. Can the customer of the Kingston bank claim undue delay (1) in presentment, or (2) in the notice of dishonour?

Answer.—If the cheque was sent forward promptly from Kingston to Toronto, and from Toronto to Sault Ste. Marie, and presented in due course after reaching there, the presentment was, we think, duly made within the terms of sub-sec. 2 of sec. 86, Bills of Exchange Act. We do not think that the customer could complain of delay only because the bank sent the cheque to Toronto instead of sending it to Sault Ste. Marie direct. The only question is whether the delay thereby caused rendered the presentment one not made within a reasonable time, but we think that, having regard to the usage of banks, such a mode of presentment is permissible.

(2) The question suggests that the return of the cheque was relied on to serve as notice of dishonour, and if so the return through the same channel, if each step is within the limit of time allowed by law, would be sufficient. If notice of dishonour had been sent to the customer by the bank at Sault Ste. Marie, delay in returning the cheque would have no effect on the customer's liability.

AGENCY—NOTE SENT TO PRIVATE BANK WHICH FAILED TO REMIT AFTER COLLECTION—RESPONSIBILITY.

Question 334.—A chartered bank sent for collection to a private bank in Y. (the only bank in the town) a note for $100 payable at the office of the private bank in Y, which note had been deposited with the chartered bank as collateral security by one of its customers. The note was paid at maturity, and the private bank failed and did not remit for the collection. Who should bear any loss incurred? If the bank, please give reason?

Answer.—Most banks take the precaution of requiring customers who discount, or lodge for collection, bills payable at such points to give a letter, the effect of which is to make the private banker the agent of the customer. In the absence of any letter or agreement of this kind, the private banker would be the agent of the bank, and the bank would, therefore, have to bear the loss.

AGENCY—COLLECTIONS SENT TO PRIVATE BANKERS.

Question 335.—A current account customer brings in a note for collection, made payable at a private banker's office in a place where there is no chartered bank. He is told that the collection will only be forwarded to the private banker's at his own risk, and the following notice had been placed in his pass book when his account was opened, viz.:

All bills, notes and other securities left with the bank for collection will be collected at the risk and cost of the parties leaving them, the bank only holding itself responsible for the amount actually received by it, and not for any omission, informality or mistake occurring in collecting them.

When the note matures a partial payment is stated to have been made on the note to the private banker who fails to remit the money, and also fails financially, suspending payment the day after the payment was made.

(1) Can the customer bring suit against the bank and recover the amount paid on the note, but not remitted by the private banker?

(2) Would not the customer have a chance to recover the amount from the maker of the note? In making the note payable at this private banker's office, did he by so doing appoint him the collecting agent?

The note was returned to the customer, and of course no charge was made by the bank.

Answer.—(1) If the understanding with the customer was clearly that stated, then he must be taken to have authorized the employment of the private banker as his agent to make the collection, and must bear any loss that may result therefrom. On proof of the conditions upon which the collection was received the customer's suit must fail.

(2) The customer has no remedy against the maker of the note. Having authorized the employment of the private banker to collect the note, anything paid the latter by the maker is in effect payment to the customer.

The fact that the note was made payable at the private banker's office is immaterial. The liability is placed upon the customer by the parole agreement, etc., at the time the note was handed in.

We might add that the law is quite clear that where a bank selects a collecting agent of its own accord, without asking the customer for instructions, or putting on him the risks involved, it is responsible for the agent's acts.

Where a customer discounts with a bank bills which can only be collected by sending them to a private bank, it might seem reasonable that, as the sending of them to such agent is a course forced upon the bank by its customer's manner of doing business, he should be responsible, but the law is clearly otherwise, and most banks, we think, now take the precaution of requiring customers who discount or lodge for collection bills payable at such points, to give a letter of indemnity on the lines suggested by the notice clipped from the pass book.

AGENCY—RESPONSIBILITY OF BANKS FOR THE SELECTION OF COLLECTING AGENTS.

Question 336.—A bank receives on deposit from one of its customers a sight draft which is sent for collection to a branch of La Banque Ville Marie. The latter remit by draft on the head office, but before the draft can be presented the institution closed its doors. Can the first bank look to its customer for the amount?

Answer.—The cases make it clear that unless the bank sent the bill to the Banque Ville Marie at the request of the depositor, it is responsible for the consequences of sending it there.

AGENCY—RESPONSIBILITY OF BANKS FOR THE SELECTION OF COLLECTING AGENTS.

Question 337.—Mr. X is a customer of bank A. He has deposited in bank A a cheque of $5,000 drawn on bank B at such-and-such a place. A's correspondent at this place is bank C. Bank C sent cheque to bank B and received payment on the same date. Bank C has failed the same day. Can the person who has deposited cheque for $5,000 recover the amount from his bank, the remittance not having been made by the bank which has failed?

Answer.—It is now generally conceded that in such circumstances the collecting bank is the agent of the bank which employs it, not the agent of the latter's customer, so that if the agent collects money belonging to the customer and fails to account for it, the customer's bank is liable to him for the amount. (See Falconbridge on Banking, page 186).

LIABILITY OF COLLECTING AGENT—EXPRESS COMPANY.

Question 338.—A bank at Creditburg sent a promissory note for collection addressed to "The Express Company, Duntown." The agent of the express company collected the note and remitted proceeds in error to an endorser on the note, instead of to the bank, which endorser made an assignment a few days afterwards.

Is the express company liable? Can it escape liability under the plea that the bank sent the note direct to the express company at Duntown instead of through the local agent at Creditburg?

Or is the agent only personally liable?

Answer.—Assuming that there were no instructions in the communication sent with the note which would justify the remittance of the proceeds to the endorser, the express company or the agent would be liable to the owner of the note. As to which is liable would depend on the extent to which the express agent is the agent of the company. It would seem to us that as the express company hold him out as their agent for their ordinary business, which includes the collection of money, they would be liable. They might say that a collection sent to him by mail from another point and not through the local agent, is not within the usual scope of their regular business, but we doubt very much if that affects the question of agency. He collected the money on their behalf, and the charge for the service was no doubt credited to them.

DRAFT ACCOMPANIED BY INSTRUCTIONS TO ALLOW A DISCOUNT OF 2½ PER CENT. IF PAID BEFORE A FIXED DATE.

Question 339.—A firm makes a draft on a merchant in this city with instructions to allow a discount of 2½ per cent. if paid before a certain date. Has the drawee the right to change the face of the draft and is the ledger-keeper justified in marking this draft for the amount minus the discount when paid before the time specified?

Answer.—We presume that the "instructions" are given to the collecting bank and the item to be in its hands; it surrenders it for payment less 2½ per cent. if paid before the prescribed date—the rest is mere detail.

BILL PAID ON THE DAY AFTER MATURITY, BUT OWING TO TRANSPORTATION DIFFICULTIES REMITTANCE IS DELAYED FIFTEEN DAYS—IS DISCOUNTING BANK ENTITLED TO INTEREST FOR THIS PERIOD?

Question 340.—A bank discounts for its customer in Prince Edward Island a time bill drawn say on Halifax. This bill is paid by the acceptor the day after maturity. Due to the transportation difficulties the discounting bank does not receive a remittance until fifteen days after the due date. Is the bank entitled to interest for the period between the maturity date and receipt of the remittance, and can it collect such interest from its customer?

Answer.—A bank discounting a bill in the ordinary course of business becomes the purchaser of it, the consideration being the proceeds paid to the vendor. It follows that it has to stand by its obligation and should, therefore, provide for all contingencies when discounting it. In practice, the matter is one for arrangement between the bank and its customer, and if the latter declines to pay additional interest, the bank has no recourse.

DELAY IN OBTAINING PROBATE OF WILL—MAKERS OF NOTES DUE TO THE DECEASED OFFER PAYMENT AT MATURITY—CAN INTEREST BE COLLECTED FROM THIS DATE TO THE TIME WHEN THE EXECUTORS ARE IN A POSITION TO RECEIVE THE MONEY?

Question 341.—We hold for safekeeping notes of a man now deceased. He appointed as his executors a trust company. There has been delay in taking out the administration papers. The makers of the notes have offered to pay the notes at their maturity. They now decline to pay subsequent interest. Can interest be collected from the date of maturity on the past due notes when the executors are ready to receive the money?

Answer.—No; payment of a note being tendered at maturity at the place where it is payable, interest ceases to accrue.

NOTE PAYABLE WITH INTEREST—FAILURE OF BANK TO COLLECT INTEREST.

Question 342.—A teller in a bank takes from a customer some notes for collection and at his request initials the passbook by way of receipt for the same. The notes are handed over to the collection clerk, who puts them through and in turn he gives them to the accountant to check. One note bears interest at six per cent. The collection clerk does not add the interest to the face of the note, and enters it in the diary for the face amount, the entry being checked by the accountant. On the day of maturity the teller initials for the note in the diary and accepts the face amount, placing the money to the payee's credit. Eight months after the payment of the note the payee claims that the interest should have been credited to him and demands the amount. The note is in the promissor's possession, who cannot be found.

At such a late day can the customer demand interest, and has he not to prove that the note bore interest, our books not showing that it did?

Who would be responsible for the amount as among the clerks, the teller or accountant, or should each bear a share?

Answer.—We think that the bank is undoubtedly responsible to the owner of the note for the amount short collected, if, as a matter of fact, the note was payable with interest. The owner must of course prove this fact before the bank could be called on to pay.

As among the clerks it is somewhat difficult to fix the responsibility for the oversight. We would think, however, that it must chiefly rest on the teller. He was handed the voucher, and when he took payment had the document itself on the counter and should have collected the amount according to its terms. We do not think the collection clerk who entered the bill, or the accountant who passed the entry, can be held responsible, although as a matter of fair dealing it must be said that they helped to lead the teller into the mistake.

ACCEPTANCE PAYABLE "WITH EXCHANGE"—REFUSAL OF ACCEPTOR TO PAY EXCHANGE.

Question 343.—A draft for "$100 and exchange," with a "no protest" slip attached to it, is sent to a bank in Halifax for collection and is accepted. At maturity the acceptor refuses to pay more than $100, which the bank takes as payment on account, endorses the same on the draft, and returns it to the owner. Has the collecting bank the right to accept a payment on account, or should it return the bill unpaid?

Answer.—The course adopted was the proper one. The collecting bank may refuse to accept anything other than the full amount of the item, in this case $100, plus the current rate of exchange, but it may accept partial payment, and in such a case as this, consideration for the interests of the owner of the draft would seem to require the acceptance of the partial payment.

CHEQUES DRAWN PAYABLE "WITH EXCHANGE," "WITH COMMISSION" OR "WITH BANK CHARGES."

Question 344.—If a cheque is written "with exchange," "with commission," "with bank charges," or some such expression, is the cashing bank entitled to add commission when forwarding for redemption and is the drawee bank justified in charging the increased amount to customer's account without further authorization, the commission added being reasonable and the usual charge?

Answer.—In practice, such orders to pay are usually honoured, but there is no legal warrant for it, since the document is not, strictly speaking, a cheque at all—one of the prescribed conditions, viz.: that it shall be for a sum certain, not being complied with. To make it valid, the rate or the amount of exchange to be added should be stated, and a bank assumes a certain amount of risk in waiving this requirement.

ALTERATION OF AMOUNT ADDED TO A CHEQUE DRAWN "WITH EXCHANGE."

Question 345.—Cheque signed by "A" drawn on bank "B" (outside point) payable to "C" with exchange. "C" deposits cheque with his bank "D" which adds exchange at ¼ of 1%. When presented to bank "B" exchange is changed to ⅛ of 1% and certified as such. Has bank "B" the right to change cheque and certify, or should same be returned to bank "D" stating that they would pay as face amount plus ⅛% of 1% exchange?

Answer.—The instrument is, strictly speaking, not a cheque since the words "with exchange" are not sufficient to indicate the sum certain that is intended to be paid, and the drawee bank would be justified in refusing to honour it at all. The general practice, however, is to honour such items for the amount asked for, or return them stating what amount will be paid. Bank "B" had no right to make any change in the item in question.

CHEQUE TO "ORDER" ENDORSED BY THE PAYEE "WITHOUT RECOURSE."

Question 346.—(1) A cheque payable to order is presented for payment by the payee, bearing above the endorsement the words "Without recourse to me." Should the bank refuse payment?

(2) Is there any danger in negotiating a marked cheque so endorsed by the payee?

Answer.—(1) If the payee of a cheque, who is receiving payment thereof from the bank on which it is drawn, chooses to write over his signature the words "Without recourse to me," we do not think that need affect the willingness of the bank to pay. The bank has in such a case no claim on him as endorser and his disclaimer is mere surplusage. It would not relieve him from liability to return the money if it should prove that he is not the proper person to whom the money should have been paid, *i.e.,* that he is not really the payee.

(2) The danger in negotiating a marked cheque on another bank so endorsed, is that the endorser would not be liable if the bank were to repudiate the marking or were to fail. Such an endorsement would not relieve the endorser from liability to return the money if it has been wrongly paid him.

CHEQUE PAYABLE TO ORDER—RIGHT OF DRAWEE BANK TO DEMAND ENDORSEMENT.

Question 347.—Section 22, clause (2) of the Bills of Exchange Act reads: "Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option."

Does this mean that if a cheque is drawn, for instance, "Pay John Smith or order," John Smith can demand payment from the bank on which drawn without endorsing the cheque or giving the bank a receipt, or what does it mean?

Answer.—If a cheque is worded "Pay to the order of John Smith," a literal interpretation of the drawer's instructions would exclude any right of John Smith personally to receive payment, as it is clearly an order to pay, not him, but his endorsee. The clause mentioned was passed to make the words equivalent to "pay to John Smith or order."

The question of the right of a bank to demand the payee's endorsement has been frequently discussed, and the view expressed that it has such a right. It may be urged that if a customer instructs the bank to pay a certain person, his instructions must be obeyed, and the bank must preserve such evidence of the payment as it can, that being the general rule with regard to all payments by debtors. But the bank, in our opinion, is entitled to rely on the universal practice of banks on this point as governing its relations with its customer, and to treat its contract with him as one under which it is bound to pay his cheques, provided it has funds, and provided also that the customary requirements as to endorsement are fulfilled.

It is to be remembered further that the customer is entitled, before he ratifies the payments made on his behalf, to have his order cheques endorsed by the payees, or to have satisfactory evidence that they have been so paid.

CHEQUE PAYABLE TO "ORDER" — RIGHT OF BANK TO DEMAND PAYEE'S ENDORSEMENT.

Question 348.—John Jones gives a cheque on the Bank of Montreal, Toronto, payable to C. Smith or order. Mr. Smith presents the cheque for payment, but refuses to put his name on the back. Can the bank, who know him to be Mr. C. Smith, refuse to cash the cheque without his endorsement?

Answer.—We are of the opinion that bank on which a cheque is drawn, is entitled to have the payee's endorsement placed on the same before paying it, to serve as a receipt or acquittance for the money. We base this view on the well understood practice of banks, which amounts, we think, to a contract with the customer, (a) that it will pay out money received for credit of a current account, as the customer may instruct, provided it receives a proper discharge for the payment, and (b) that it will furnish the customer with a proper voucher for any money paid on his account.

Looked at in either way it is clear that a cheque needs to be endorsed by the payee in order that the voucher may be in itself a complete document. The case differs altogether from that of an ordinary debtor who is bound to find his creditor and pay him the debt, and is not entitled to a receipt, but must himself preserve such evidence as he can of the payment. The bank is not under any liability to the person presenting the cheque and whatever contract exists with the drawer is certainly on the lines presented above.

NOTE.—In the Province of Quebec payment must be made at the domicile of the debtor, unless another place is expressly or impliedly indicated by the obligation. C.C. Art. 1152.

CHEQUE TO BEARER DRAWN ON AN OUTSIDE POINT—BANK'S RIGHT TO REFUSE NEGOTIATION WITHOUT THE CUSTOMER'S ENDORSEMENT.

Question 349.—May a bank refuse to negotiate a cheque drawn on some other point and payable to bearer, unless endorsed by the customer?

Answer.—A bank may refuse to cash a cheque under any conditions whatever.

If, however, the question intended is whether a bank acts reasonably in refusing to cash such a cheque for a customer without his endorsement, we should say that such a refusal is most reasonable.

The only cheques about the payment of which the bank is under any obligation are those drawn on itself. If a cheque on itself payable to bearer is presented, it cannot call on the bearer to endorse it as a condition of payment.

CHEQUE PAYABLE TO BEARER CANNOT, BY ENDORSEMENT, BE MADE PAYABLE TO ORDER ONLY.

Question 350.—Can the holder of a bill or cheque payable to bearer endorse it "Payable to the order of A"? In other words, a bill or cheque being originally payable to bearer can any holder or endorser make it payable specially or restrictively?

Answer.—Under sub-section 3 of sec. 21, Bills of Exchange Act, it is declared that "a bill is payable to bearer which is expressed to be so payable." This seems to preclude the possibility of such a bill being made payable otherwise than to bearer, and when a cheque is so drawn the drawer's instructions are not affected by an endorsement, and the bank is protected in paying it to bearer, in accordance with its terms.

If the holder of such a cheque desires to protect himself from loss, he can do so by crossing the cheque generally or specially as he may desire.

CHEQUE ENDORSED BY THE MAKER, BUT NOT BY THE PAYEE, DOES NOT BECOME PAYABLE TO BEARER.

Question 351.—If a cheque of which B. Black is the maker, is made payable to A. Brown, and is endorsed by the maker, does the cheque become a bearer cheque?

Answer.—No, unless the drawer specifically declares his endorsement to be a waiver on his part of the endorsement of the payee.

CHEQUE WITH WORDS "OR ORDER" STRUCK OUT, IS NOT A BEARER CHEQUE.

Question 352.—(a) I shall be glad to learn whether the mere striking out the words "or order" converts a cheque into "bearer"?

(b) Also whether an "order" cheque altered by drawer to read "or bearer," without being initialled by him, would require the endorsement of payee?

Answer.—(a) Sec. 22 of the Bills of Exchange Act helps to answer the first question. If a cheque is payable to "John Smith," the words "or order" being struck out would not convert the cheque into a bearer cheque. If it is on its face payable to John Smith, but if John Smith endorses it in blank after the words "or order" are struck out, it becomes a "bearer" cheque.

(b) With reference to the second question, *prima facie* a cheque so altered must either be initialled by the drawer or endorsed by the payee, and a teller would be justified in insisting on one or the other before paying it.

CHEQUE PAYABLE TO "CASH OR ORDER"—ENDORSEMENT.

Question 353.—Does a cheque payable to "cash or order," if presented by the drawer, require his endorsement? Is the situation altered if presented by a third party?

Answer.—A cheque so drawn is irregular in form, there being no payee of the name of "cash," as is suggested by making the cheque payable to the order of "cash." Neither is it a case of a fictitious or non-existing person within the meaning of the Bills of Exchange Act. If the drawer presents it, he should be made to endorse, as the endorsement would undoubtedly authorize a debit of the amount to his account. If presented by a third party the cheque should be first endorsed by the drawer if the bank is to have authority to debit the cheque to the drawer's account.

CHEQUE PAYABLE TO "SELF OR ORDER"—ENDORSEMENT.

Question 354.—Does a cheque made payable to "self or order" or "to the order or self," require to be endorsed by the maker of the cheque?

Answer.—According to section 22, sub-section 2, Bills of Exchange Act, the two wordings are equivalent. If payee demands payment without endorsing, the banker would probably be obliged to pay, but he could in turn demand a receipt for the money.

CHEQUE ENDORSED GENERALLY BY PAYEE—REFUSAL OF PARTY PRESENTING TO ENDORSE.

Question 355.—A presents at the drawee bank a cheque payable to the order of B and endorsed generally by the latter, which he himself declines to endorse. Can the bank refuse payment until he does?

Answer.—The bank has probably no right to demand A's endorsement, but it has the same right to withhold payment until it is satisfied that the endorsement of B is in order that it would have if B, being a stranger, presented the cheque in person.

LIMITED COMPANY—AUTHORITY OF PRESIDENT TO ENDORSE CHEQUES.

Question 356.—Cheques, etc., of a limited liability company need to be signed by the president and secretary-treasurer. A cheque in payment of goods is endorsed by the company to another party, the president only signing for the company. Would the bank be justified in refusing this?

Answer.—It is presumed that the cheque is drawn upon the bank that carries the company's account, and it is part of its duty to see that its customer has a clear discharge from the payee. If an authority for the President to endorse alone only extended to endorsement of items to be placed to the company's credit, the discharge is evidently insufficient, but this would be determined by the by-laws of the company, and these should govern the paying bank's action.

CHEQUE TO ORDER, DEPOSITED UNENDORSED.

Question 357.—(a) A. Jones deposits with his bank a cheque, which he neglects to endorse, the cheque being made payable to his order. His banker endorses on the cheque: "Deposited to the credit of A. Jones," and signs his name as manager of the bank. Would this constitute an endorsement?

(b) If the cheque was not paid when presented at the bank on which it was drawn, could the banker, who endorsed it as stated above, recover the amount of the cheque from A. Jones?

Answer.—(a) This is not an endorsement.

(b) The bank could, we think, recover the money from its customer, not because he was liable on the bill which he had neglected to endorse, but because the bank had given him value for it on the understanding that it would be endorsed over to the bank, and that the omission of the endorsement was a mistake which he must make good or return the money. The bank, however, has a right to demand the customer's endorsement under section 61 of the Bills of Exchange Act.

CHEQUE PAYABLE TO AN INSOLVENT, DECEASED—ENDORSEMENT.

Question 358.—A man assigns and within a week dies. A cheque dated after his death which is made payable to him personally is presented for payment. Should the assignee of the estate or his executor or administrator endorse the cheque?

Answer.—If the cheque was given for a debt due at the time the assignment was made, we think the money might be safely paid to the assignee. On general principles the executor or administrator should endorse.

ENDORSEMENT WITHOUT RECOURSE.

Question 359.—"A" of Halifax draws on "B" of St. John in favour of Bank "R" for $100, payable 30 days after date. Bank "R" discounts the bill for "A" and after placing on it the following stamped endorsement, viz.: "Pay to the order of any bank or banker for the bank of 'R,' Smith, Manager," forwards the bill to Bank "Z" for collection. The collecting bank "Z" of St. John obtains acceptance of the bill and at maturity returns it to the bank "R" dishonoured for non-payment. Bank "R" erases the above endorsement and re-collects the amount from "A." Can "A" sue "B" on the bill without further endorsement of Bank "R"?

The bill was for value.

Answer.—The bill should be endorsed by the bank back to "A" without recourse.

CROSSED CHEQUES.

Question 360.—Would a Canadian teller be justified in paying a cheque with two lines across the face? I take it that if a cheque were crossed to, say the Bank of Montreal, it would have to go to the credit of the payee's account in that bank—that is, would have to be deposited to the man's credit, and the teller could not legally pay out the cash for it.

Answer.—A teller would not be justified in paying cash over the counter for a crossed cheque, whether the crossing be special or general—that is, with two lines only, or with the name of a bank in addition to the lines. A crossed cheque should only be received for credit of the account of a customer—not necessarily the payee—at the bank to which it is crossed, or, if crossed generally, at a bank. Of course a bank may cash any crossed cheque, under any circumstances, but at its own risk. If the right party receives the money, that ends the matter; if not, the bank might not have the protection afforded by clauses 173 or 175 for payments made in the regular course.

SAVINGS BANK CHEQUE—RETURNED THROUGH CLEARING HOUSE MARKED "PASS BOOK MUST BE PRESENTED."

Question 361.—We sent a cheque through the clearing house on another bank in town. The cheque is returned marked "No account. Savings account pass book must be presented. Savings account not subject to cheque." Was the bank justified in refusing payment assuming that the drawer of the cheque had the necessary funds at his credit?

Answer.—Yes—unless by its course of action in previously waiving the requirements of presentation of the pass book or by honouring cheques the bank has established a practice which would bind it to continue so to do. These are questions of fact and depend entirely upon circumstances.

SAVINGS BANK CHEQUE—RETURNED THROUGH CLEARING HOUSE MARKED "GOOD," BUT WITH NOTE THAT "BANK BOOK REQUIRED" BEFORE PAYMENT.

Question 362.—Bank A clears a cheque through the clearing house to bank B. Bank B marks the cheque "Good," but refuses to pay it, returning it with the following note: "Bank book required." Assuming the account is a savings bank one and there is a regulation under which the deposit is made by which the bank can compel production of the book before paying a cheque on withdrawal, has not bank B waived the regulation by marking the cheque?

Answer.—The circumstances seem to amount to no more than an intimation on the part of the drawee bank that the cheque would be paid when accompanied by the book and, on the assumption indicated, it could not be claimed to have waived its regulation.

SAVINGS BANK CHEQUE—PRESENTATION THROUGH CLEARING HOUSE — PAYMENT REFUSED AND CHEQUE PROTESTED ON THE GROUND THAT IT WAS NOT ACCOMPANIED BY PASS BOOK.

Question 363.—Can a bank legally refuse payment of a cheque drawn on savings bank, giving a reason "Balance of account. Pass book must accompany cheque." Cheque was presented, refused for above reason and duly protested. Should not the bank upon which the cheque was drawn pay protest fees? Have had advice from different sources on this point, but as the customer when opening a savings account does not agree to any rules either verbally or in writing, we are of opinion this rule is purely "internal" and not a legal reason for refusing payment of a cheque.

Answer.—The conditions under which the account is opened, or of which the customer has subsequent notice, would govern. It is not necessary that the customer agree either verbally or in writing to rules of which he has received notice, but the bank could not change its rules or practice with the customer without reasonable notice. The printed regulations on savings department pass books usually provide that the book must be presented when withdrawing money, and given up when the account is closed. In practice, however, certain savings bank customers are allowed to issue cheques on their savings accounts, and where this has been permitted, the bank should not attempt, without notice to the customer, to enforce the rule as to the production of the book when the money is withdrawn. The fact that the cheque in question would have withdrawn the balance, perhaps introduces a further item for consideration, but if the customer could show that he had suffered injury through the dishonour of his cheque, he might succeed in recovering damages from the bank. A court of law would, no doubt, take into consideration all the surrounding circumstances. Looking at it in a practical way, the bank takes very little risk in paying the cheque while protesting it annoys the customer and benefits no one.

SAVINGS BANK—PRESENTATION OF CHEQUE FOR AN AMOUNT WHICH INCLUDES INTEREST ACCRUED BUT NOT YET DUE —RIGHT OF BANK TO REFUSE PAYMENT.

Question 364.—A savings depositor issues a cheque against his account for an amount greater than the balance actually at the credit of the account, though the balance together with the accruing interest would be sufficient to cover the cheque. The cheque is presented through the clearing house and is returned "N.S.F." by the ledger-keeper. Has the depositor any ground for complaint?

Answer.—Where interest is agreed to be credited on certain specified dates, a customer who issues a cheque which includes interest accrued but not yet due has no cause for complaint if his cheque is refused on that ground.

ALTERATION OF CHEQUE FROM "ORDER" TO "BEARER," AFTER ISSUE—PAYMENT BY BANK TO WRONG PERSON —RIGHT OF DRAWER TO CLAIM REIMBURSEMENT.

Question 365.—A bank cashed a cheque for the wrong person with "order" ruled out and "bearer" written in. The drawer of the cheque claims reimbursement for the amount on the ground that the change did not bear his initials. The bank claims that the cheque was payable to bearer, therefore, the drawer has no claim. Who is right?

Answer.—The alteration is a "material" one within the meaning of section 145 of the Bills of Exchange Act and unless it was made by the drawer or with his consent, he is within his rights in requiring reimbursement.

PAYMENT OF A COUNTERMANDED CHEQUE—RESPONSIBILITY OF OFFICERS.

Question 366.—The teller and ledger-keeper in a bank have both received a valid notice to stop payment of a certain cheque. It is presented to the teller for payment, and without requiring the holder to get it marked by the ledger-keeper as provided in the rule, he pays it. It is subsequently charged to the account by the ledger-keeper. Both officers have overlooked the notice stopping payment. Which should be held responsible?

(2) If a teller paid a forged cheque without requiring it to be marked by the ledger-keeper, and the latter subsequently charged it in the account without discovering the forgery, on whom would the responsibility rest.

Answer.—So far as the bank is concerned the loss if any was incurred as soon as the teller paid the item, and he should be held responsible. The ledger-keeper's act in charging the cheque to the customer's account would not change the bank's position, or relieve the teller from his responsibility, but if under the circumstances it could be fairly held that the ledger-keeper's negligence deprived the teller or the bank of an opportunity of recovering back the amount, the bank should in justice to the teller hold the ledger-keeper responsible for a portion of the loss.

(2) We would take a similar view in this case.

CHEQUE CERTIFIED BY DRAWEE BANK THROUGH OVERSIGHT—CERTIFICATION CANCELLED.

Question 367.—The bank on which a cheque, payment of which has been stopped, is drawn, receives it by mail from an outside point. Through oversight the cheque is marked and stamped paid. The error is discovered before three o'clock and the cheque sent to protest. The teller marks the cheque "cancelled in error," but the ledger-keeper forgets to remove his initials. Do the initials of the ledger-keeper commit the bank to pay the cheque?

Answer.—We think not. As the bank did not as a matter of fact honour the cheque, and as the initials were left on in error, the holder could not claim any benefit from such an error.

PAYMENT IN ERROR—CERTIFIED CHEQUE TO WHICH AN AMOUNT HAS SUBSEQUENTLY BEEN ADDED FOR EXCHANGE.

Question 368.—Bank A presents to bank B for acceptance a draft for $15 drawn "with exchange" the exchange, however, not having been added to the amount of the draft. Bank "B" certified the item as $15. Bank "A" then adds fifteen cents exchange (which it had no right to do) and sends it through the clearing as $15.15. Bank "B" signs receipt for the deposit, including the item (there being no clearing house) and afterwards discovers the error. Describe the correct method of adjustment.

Answer.—Bank "B" should demand fifteen cents from bank "A" as money paid in mistake. Bank "B" is liable for no more than the amount for which it certified the cheque, which is stated to be $15.

PAYMENT IN ERROR OF FACE AMOUNT OF DRAFT BEARING PARTIAL ACCEPTANCE—SHOULD OVERPAYMENT BE REFUNDED?

Question 369.—A draft for collection was accepted for less than face, but charged to drawee's account as for full face in error. Bank from whom received refuse to refund amount overpaid. Must they repay, or on whom should loss fall?

Answer.—This appears to be a clear case of payment under mistake, and one where the party receiving the money should refund the amount overpaid.

The partial acceptance has of course important consequences with respect to the drawer and endorsers, but it does not make the acceptor liable for more than the partial amount, and having paid more, in error, he is entitled to recover the excess unless special circumstances intervene which would debar him from doing so.

CHEQUE UNMARKED, RECEIVED ON DEPOSIT BY THE BANK ON WHICH IT IS DRAWN—RIGHT TO RECOVER ON FINDING THAT THERE ARE NOT FUNDS.

Question 370. A bank receives on deposit from another bank a cheque drawn upon it by a customer and enters the deposit at the credit of the other bank in the latter's passbook. After entering the credit, but before three o'clock of the same day, the paying bank discovers that the cheque is not good and wishes to charge it back to the depositing bank. Has it the right to rescind the credit which has been given? The transaction takes place at a small office where the teller, who took the deposit, should have known or been able to ascertain at once the state of the customer's account?

Would the position be different in a large office where the teller, who received the deposit and passes the cheque, might not know for some time whether or not there were funds for it?

Answer.—The case of a cheque drawn on the same bank in which it is deposited differs from the case of a cheque drawn on another bank. In the one case the holder of the cheque when presenting it is entitled to know at once whether it is good or not, and his recourse against the drawer and endorser depends upon the cheque being dishonoured on presentation and upon notice of the dishonour being properly given. If the presentation for deposit can be considered a presentation for payment (and we think it should be so considered), the question arises, has the cheque been honoured by credit for its being given in the depositor's book? If so, then the holder has lost his remedy against the drawer and endorser, as he cannot properly notify them that the cheque has been dishonoured, and the bank cannot, after changing his position in this way, repudiate the credit. *Prima facie* this would, we think, be the position, and the principle explained in the *River Plate Bank* v. *Bank of Liverpool* case would apply. We think, however, that if it were clearly shown that by universal custom, or by agreement with the customer, the presentation for deposit entitled the bank, as the drawee of the cheque, to take a reasonable time to consider whether to pay the cheque or not, and in the meantime to credit the amount in the depositor's book, then the bank would not be prevented from subsequently, and within a reasonable time, refusing payment, as the entry in the book would not, in such a case, be treated as honouring the cheque in a way to prevent the holder from giving notice of dishonour if payment were afterwards refused.

DRAFT WITH THE AMOUNT IN FIGURES DIFFERENT FROM THAT IN BODY—RESPONSIBILITY FOR OVERPAYMENT.

Question 371.—The amount of a draft is expressed in words in the body as $150, the figures in the margin being $250, and is collected by a bank from the drawee at the latter amount. Some time afterwards the drawee discovers the mistake. Has he a right to require the bank to repay the $100?

Would the position of the parties be different (1) if the draft had been drawn on an agent of the drawee and he had received the $250, and (2) if the bank which collected the draft merely held it for collection, and not as the owner?

Answer.—The sum denoted by the words would be the amount payable. The payment in excess of $150 would be a payment made by reason of a mistake in fact, and if the bank were not a mere agent in the matter, the $100 would be recovered from the bank by the drawee.

If the bank were an agent, but the agency were not disclosed to the drawee, the same result would appear to follow, unless upon discovering the bank's principal the drawee chose to pursue the principal, instead of the agent.

If the bank were an agent acting for a disclosed principal, and the money received had been paid over to such principal, then the remedy of the drawee would appear to be against the principal and not against the bank.

CHEQUE FOR WHICH THERE WERE NOT SUFFICIENT FUNDS CASHED BY TELLER IN ERROR—NO RECOURSE AGAINST PAYEE.

Question 372.—A cheque for which there were not sufficient funds was cashed by our teller in error. When mistake was discovered later on in the day, cheque was protested for non-payment. Have we recourse against payee? (Cheque was not charged to drawer's account).

Answer.—A banker is presumed to know the state of his customer's account and, having paid a cheque, he has no recourse against the payee.

CHEQUE FOR WHICH THERE WERE NOT SUFFICIENT FUNDS PRESENTED BY CUSTOMER OF BANK AND PAID BY TELLER—ONLY RECOURSE OF BANK IS AGAINST DRAWER.

Question 373.—A, an old customer of the bank (who keeps a fairly good account), presents B's unaccepted cheque to the teller for encashment. The teller cashed B's cheque, handing over the cash to A. Later when the cheque reaches the ledger-keeper there are not sufficient funds to pay. In what position is the bank? Has the bank any recourse against A's account, or is it simply between the bank and B?

Answer.—With the encashment of the cheque the transaction is ended so far as "A" is concerned. He could not be compelled to refund the amount paid him, since the bank is supposed to know the state of its customer's account and could not claim it to be money paid by mistake. Its only recourse is against "B."

DEFACING A DISHONOURED CHEQUE—SIGNATURES CANCELLED IN ERROR—REFUSAL OF COLLECTING BANK TO TAKE IT BACK WHEN TENDERED THROUGH CLEARING HOUSE.

Question 374. A cheque for $9 is paid through the clearing, but drawee bank dishonours same without protest, on the ground that maker has no account, but unintentionally stamps "Paid" and cancels signature. Cheque is marked "cancelled in error" and debited back through the clearing, but the holding bank refuses to accept it because the signature is cancelled. Is the drawee bank obliged to pay the cheque?

Answer.—The reason given is not sufficient of itself to warrant the refusal of the bank sending the cheque through the clearing to take it back when tendered to it by the drawee bank.

DEFACING A DISHONOURED CHEQUE.

Question 375.—A cheque has been dishonoured, and is charged back to the account of the customer from whom it was received. When charging it back the ledger-keeper marks the cheque with the folio and his initials. The cheque is subsequently honoured by the bank on which it is drawn, but some difficulty is created by the figures and initials already placed on it. Do you not think the action of the ledger-keeper in question open to criticism?

Answer.—The action was certainly open to criticism. We do not think it is a good practice to treat a dishonoured cheque or bill as the entry voucher in debiting it back to the customer, as the item is thereby liable to be cancelled or mutilated.

PAYMENT TO PARTY WITH DEFECTIVE TITLE—LIABILITY OF PRIOR ENDORSERS TO DRAWEE OF CHEQUE.

Question 376.—With reference to the right of a bank that has paid a cheque to a party with a defective title, to recover the amount from him, are not the prior endorsers on the cheque under the same liability to the bank? Suppose the cheque had been paid to another bank which afterwards was wound up; could not the bank that paid the cheque look to the endorser from whom the defunct bank had received it?

Answer.—We think this is doubtful. The prior endorsers had nothing to do with getting the money from the bank on which the cheque was drawn, and we do not see how the latter could have any right of action against them.

CHEQUE IN FAVOUR OF JOHN JONES PAID TO ANOTHER PARTY OF THAT NAME.

Question 377.—(1) I make a cheque payable to John Jones. This falls into the hands of the wrong John Jones, who presents it, demanding payment. The teller, knowing him to be John Jones, pays cheque. Is the teller liable for paying to the wrong person? (2) Is the bank liable?

Answer.—Although the rule seems a hard one, the payment in such a case is not properly made, and the bank has no right to charge the cheque to the customer's account.

As between the bank and the teller, the latter is of course in the same position as if he paid the cheque on a forged endorsement.

CHEQUE STOLEN FROM ENDORSER AND CASHED BY THIEF—RECOURSE OF PAYING BANK.

Question 378.—John Smith draws a cheque in favour of Thomas Jones, who endorses it, places it in his pocket, and afterwards loses it by theft. The cheque is cashed by a bank (which is acquainted with payee's signature) in a town some distance from the point on which it is drawn. Payment in the meantime has been stopped. Has the cashing bank recourse to John Smith for the amount?

Answer.—If the cashing bank acquired the cheque without any notice or knowledge of any defect in title they would be holders in due course for value and entitled to recover the amount from the drawer and endorsers or any one of them.

LOST CHEQUE NEGOTIATED BY FINDER—DRAWER STOPS PAYMENT — DUTY OF BANK ON PRESENTATION OF CHEQUE FOR PAYMENT.

Question 379.—A makes a cheque payable to the order of B, who, in turn, endorses it in blank and turns it over to C. The cheque is lost, and found by an irresponsible party who cashes it at a local store. In the meantime, A had been advised of the loss of the cheque and had stopped payment. We hold that the cheque became a bearer one when B endorsed it, and that therefore A should remove the stop payment and C should bear the loss. Will you kindly submit your opinion?

Answer.—If the local storekeeper is an innocent holder for value he can recover from A. The bank's duty is to its customer only and, having refused payment under his instructions, it has no further responsibility and should let the parties settle it among themselves. A can safely remove the interdiction if assured that the funds will come into the hands of an innocent holder for value and he could probably be compelled to do so by process of law.

LOST BEARER CHEQUE, CASHED BY FINDER—OWNER HAS NO RECOURSE AGAINST PAYING BANK.

Question 380.—A loses a cheque on the street payable to cash or bearer. An unknown party picks it up and cashes it. Has A any recourse against the bank? In other words, is a cheque payable to bearer payable to anyone who presents it, and can a bank insist upon the payee endorsing same?

Answer.—A has no recourse against the bank. The presenter need not endorse the cheque, but the bank is entitled to a receipt for the money. The bank, if in doubt, would be justified in referring to the drawer for instructions.

FIRST OF EXCHANGE ALLEGED TO BE LOST IN TRANSIT — PAYMENT OF SECOND OF EXCHANGE TO PURCHASER OF DRAFT—LIABILITY OF BANK IF FIRST OF EXCHANGE SHOULD SUBSEQUENTLY BE PRESENTED FOR PAYMENT BY HOLDER FOR VALUE.

Question 381.—A demand draft in duplicate was drawn on the London office of the drawing bank. The first of exchange was alleged to be lost in transit. The purchaser, not being the payee, presented the second of exchange to the issuing office, which changed the draft, making it payable to bearer, and obtained payment of it from their London office, stopping payment of the first of exchange. If the first of exchange should be negotiated by an outside party, would such party be an innocent holder for value, and would the issuing bank be liable on the first of exchange?

Answer.—The question is not entirely clear, but if the first of exchange should eventually reach the payee and be negotiated in good faith, the bank would have to pay it to an innocent holder for value, notwithstanding that it had already refunded the amount of the draft to the purchaser. In such a case, however, the bank would, of course, have a claim upon the purchaser for the return of the money, and would usually ask for a bond of indemnity.

SAVINGS BANK ACCOUNT—RESPONSIBILITY OF BANK FOR PAYMENT TO HOLDER OF LOST WITHDRAWAL RECEIPT.

Question 382.—A savings bank depositor signs a receipt in the usual form, but loses it in the street. The finder presents it at the bank where the account is kept and gets the money. Have they a right to charge it to the depositor's account?

Answer.—We think not; the receipt is not an order on the bank to pay the money to the bearer, and is only a valid discharge if the money has been paid to the depositor or to some one authorized to receive the money on his behalf. If he wants the amount to be paid to another person, he should, besides furnishing the receipt, add an order to that effect.

CHEQUE PAYABLE TO J. C. RECEIVED AND CASHED BY ANOTHER J. C.—RESPONSIBILITY OF PAYING BANK.

Question 383.—J. B. sends his cheque by post, payable to J. C. at Indian Head, where J. C. lives. Another J. C. receives the letter from the post office and cashes the cheque at his bank. Upon whom does the loss fall?

Answer.—See sec. 49 Bills of Exchange Act. A "forged or unauthorized signature" being wholly inoperative, the loss falls upon the cashing bank.

FORGED ENDORSEMENTS—CLAIMS ARISING THEREFROM.

Question 384.—The drawee of a bill of exchange accepts and pays it. It is subsequently found that the signatures of the drawer and payee are forged. Can the drawer recover the money from the party who endorsed subsequently to the forged endorsement? Is not the bill discharged by payment of the liability, and the endorsers thereby discharged?

Would your opinion be affected by the following considerations: that the names of the drawer and endorser, which are forged on the bill, are those of employees of the drawee; and that the forged endorsement was totally unlike the genuine?

Answer.—The rights of the parties in the case are governed by section 50 of the Bills of Exchange Act. The drawee has under that section a right, having paid the bill on a forged endorsement, to recover the money from the party to whom it was paid, or from an endorser, who endorsed the bill subsequently to the forgery, provided the bill was paid by him in good faith and in the ordinary course of business, and provided that due notice is given. The circumstances connected with the drawee's knowledge of the endorser's signature would certainly be material in coming to a conclusion upon the question of whether the payment was or was not made in good faith and in the ordinary course of business, but it would require a very clear case to warrant the conclusion that the payment was not so made, merely because the drawee might have discovered the forgery by examining the signatures.

The rights above mentioned grow out of the payment on a forged endorsement, and the fact that the drawer's signature was forged also does not affect the question. But if the endorsement had been valid, the drawee could not reclaim the money, as he is precluded from denying the genuineness of the drawer's signature. See section 129.

RAISED CHEQUE—NOTICE TO COLLECTING BANK.

Question 385.—Bank "A" discovered, after a week had elapsed, that cheque payable to "order" received in clearing from bank "B" had been raised from $15 to $50. Cheque used was ordinary bond paper, and if safety paper had been used, change would have been immediately discovered. Bank "B" were unable to tell bank "A" for whom they had cashed cheque, as they had neglected to have it endorsed by party to whom it was paid and who presumably raised amount. They state, however, it was not cashed by party whose name shows as last endorser on back. Has bank "A" any recourse against bank "B"?

Answer.—Bank "A" can recover from bank "B" provided on discovery of the fraud it immediately gives notice to bank "B" and demands repayment of $35 overpaid.

CHEQUE PAYABLE TO "PTE. J. BRADY, NO. 536237," CASHED BY ANOTHER PTE. J. BRADY—LIABILITY OF BANK.

Question 386.—Two cheques for $70 each are issued by the Militia and Defence Department to the order of "Pte J. Brady, No. 536237." They are returned later by the Department with the words "forged endorsement" on each. The cheques were presented by a "J. Brady," cashed by "J. Brady" and endorsed "Pte. J. Brady." Must the bank refund the money? John W. Brady, who was apparently Pte. J. Brady, made a declaration that he did not receive the money. The cheques were actually cashed by Jos. Brady.

Answer.—The bank must refund the money since payment was made to a party other than the designated payee.

PAYMENT OF FORGED CHEQUE TO INNOCENT HOLDER—RESPONSIBILITY.

Question 387.—A customer of a bank deposits an unmarked cheque drawn on another bank for credit of his account. This cheque is sent into the bank it is drawn on, through the clearing house (unmarked) and is then accepted and paid. A month later, the paying bank discovers the cheque was forged, and calls on the bank from whom they received it to refund them the money. As acceptors, are they not precluded from denying the genuineness of the cheque?

Answer.—The law is quite clear that a bank is bound to know the signature of its own customer, and that it pays a forged cheque at its own peril. In the case stated, the bank would have no recourse whatever against the innocent party to whom it paid the money. The position of the bank is analogous to that of the acceptor of a bill, who, by section 129 of the Bills of Exchange Act, is precluded from denying the genuineness of the drawer's signature.

CHEQUE BEARING FORGED SIGNATURE—CANNOT BE CHARGED TO CUSTOMER'S ACCOUNT.

Question 388.—If a bank pays a cheque drawn on itself and some days afterwards discovers that the signature of the drawer is a forgery, and the forged signature is almost similar to the genuine signature, can the bank be compelled to refund the amount of the forgery to its customer, notwithstanding the fact that his signatures as drawer are usually affixed in a careless manner?

Answer.—The bank cannot charge to a customer's account a cheque the signature of which is a forgery. The fact that the forged signature bears similarity to the genuine signature makes no difference, and the customer would be entitled to demand a reversal of the entry in his account.

CHEQUE RECEIVED ON DEPOSIT, WITH A PRIOR ENDORSEMENT FORGED—LIABILITY OF CUSTOMER AFTER NOTICE.

Question 389.—A cheque in favour of one T. A., and purporting to be endorsed by him, is received from a customer of ours on deposit; he endorses the cheque after T. A. We send it to another bank, which collects the amount from the drawee bank, but first stamps on the cheque a guarantee of the prior endorsements. This guarantee is given without the authority of the prior endorsers. T. A.'s endorsement proves to be a forgery. Is the liability of our customer affected by the guarantee, and what is its effect generally?

Answer.—Assuming that notice of the forgery has been given within reasonable time, as required by the amendment to section 49 of the Bills of Exchange Act, your customer must repay the amount. His liability is not affected by the guarantee of the prior endorsements, which in this case is a contract only between the bank which guarantees and the drawee bank.

The effect of such a guarantee generally is to make the guarantor liable to return the amount to a subsequent holder if the endorsements prove to be forged or unauthorized. The law imposes practically the same liability without the guarantee, but liability under sec. 49 is conditional on reasonable notice being given after discovery, while liability under a guarantee is a matter of contract, which might exist until barred by the Statute of Limitations. The guaranteeing bank might therefore be liable under its contract of guarantee, under circumstances in which the prior endorsers would be discharged, by reason of want of notice within reasonable time.

POSITION OF ACCEPTOR WHO HAS PAID A BILL BEARING FORGED ENDORSEMENTS.

Question 390.—Referring to article on forged and raised endorsements in the April, 1903, number of the Journal, "*Cocks* v. *Masterman*," what is the position of the acceptor who has paid a bill bearing forged endorsements? Could he be called upon to pay the money again to the last holder for value prior to the forged endorsement? If the acceptor had knowledge of forged endorsement on the bill and refused payment, to whom would the holder look for payment? Would the holder and the last endorser prior to the forged endorsement have equal rights against the acceptor?

Answer.—(1) He could be called upon to pay again to a valid holder.

(2) The holder would look to the party for whom he negotiated the bill. *Vide* section 50 of the Bills of Exchange Act.

(3) The holder not being a holder in due course would have no rights against the acceptor.

RAISED CHEQUE—RESPONSIBILITY OF PAYING BANK UNLESS CHEQUE HAS BEEN CARELESSLY PREPARED BY THE DRAWER.

Question 391.—In case a bank pays a raised cheque, who is liable for the loss? (a) Can the bank charge amount paid to their customers' account, or (b) can they recover from the bank to which they paid it, or (c) from payee, who is a minor?

Answer.—The bank can only charge its customer with the original amount of the cheque, unless in drawing it he has neglected to take reasonable and ordinary precautions against forgery. It was held by the House of Lords in *Macmillan* v. *London Joint Stock Bank,* that if, owing to the neglect of such precautions, it is put into the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker. (b) Yes—(c) Yes, and they can take criminal action if he did the raising.

MARKED CHEQUE RAISED SUBSEQUENT TO THE MARKING.

Question 392.—Could the bank on which a marked cheque is drawn, which has been "raised" after marking, be held responsible for more than the original amount under any circumstances?

Answer.—Before *Macmillan* v. *London Joint Stock Bank,* the only case we can conceive where a colour of claim to hold the accepting bank responsible might have arisen would be one where it had accepted a cheque so drawn that the increased amount might be written in without any alteration being apparent.

CANADIAN DRAFT ON LONDON MADE PAYABLE TO RESIDENT OF FOREIGN COUNTRY, AND CASHED BY A FOREIGN BANK FOR A PERSON WHO FORGES THE PAYEE'S ENDORSEMENT —RIGHTS AND OBLIGATIONS OF PARTIES.

Question 393.—A Canadian bank sells a sterling draft on London to a customer. It is made payable to a person in a foreign country. The draft is cashed by a foreign bank for a person who forges the payee's endorsement, which bank in turn collects the amount through its London agent from the drawee in London.

Under these circumstances, has the purchaser of the draft any right of action against the bank which drew it? We presume not, but if so, what remedy has the owner of the draft?

Answer.—The purchaser has, as you assume, no right of action against the bank which drew the draft; he could only have such a right upon the bill as a dishonoured bill, which he could not have unless it were in his possession.

The only other parties who might be liable are:

(1) The foregn bank,

(2) The London bank to which the bill was sent by it, and

(3) The bank on which the bill was drawn.

The true owner of the draft, who might be either the purchaser or the payee (this depending on facts not stated in the question), would probably have a claim on the foreign bank which cashed it on the forged endorsement, but his rights would be governed by the law of the country in which the transaction of cashing the draft took place. If this were like the English law, his claim on the foreign bank would be clear. He would also have a claim on the London bank which received the amount of the draft from the drawee bank, but their liability might be affected by the nature of their relations with the foreign bank. His claims on both of these arise from their having received and converted his property, and not out of any provision of law relating to bills.

The remaining question, namely, the owner's rights against the bank on which the bill was drawn, has not, so far as we are aware, been judicially decided. The question is very important and interesting, and we give the reasoning on both sides of it.

Section 49 of the Act in very clear terms declares that where a signature on a bill is forged, the forged signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery. If effect were given to these words in their unqualified form, we would say without hesitation that a person claiming to be the holder of a bill through a forged endorsement, even though he acquired the bill as a subsequent holder for value and without any notice of the forgery, could not discharge the acceptor by presenting the bill on the day of its maturity at the proper place and receiving payment from the acceptor and delivering the bill up to him. It must be borne in mind, however, that section 49 commences with the words "subject to the provisions of this Act."

"Holder in due course" is defined by section 56 to be a holder who has taken a bill complete and regular on the face of it, under conditions, of which one is, that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

By section 2, sub-sec. (g), the expression "holder" is defined to mean "the payee or endorsee of a bill who is in possession of it, or the bearer thereof." Section 74 declares that the rights and powers of the holder of a bill are, among other things, (b) where he is the holder in due course he holds the bill free from any defect of title of prior parties; and (d) where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

Section 133 declares that the endorser of a bill by endorsing it (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; 133 (c) is precluded from denying to his immediate or a subsequent endorser that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto.

Section 139 provides that a bill is discharged by payment in due course by or on behalf of the drawee or acceptor, and that "payment in due course" means "payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective."

The arguments against the right of the drawee or acceptor to claim a discharge by payment to a person, a holder under a prior forged endorsement, are of course based upon section 49, which declares that a forged signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof, can be acquired through or under that signature.

The arguments in favour of the right of the drawee or acceptor to claim a discharge by such payment are the following:

1. The statement in section 49 referred to is expressly declared to be "subject to the provisions of this Act." The statement that no right to give a discharge can be acquired is also qualified by the words "unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority."

2. Under section 133 (b) the first endorser after the forged endorsement is precluded from denying to his endorsee the genuineness of the forged endorsement, and is also precluded from denying that he then had a good title.

The definition of "holder" by section 2 would include this endorsee and he would become a holder in due course within the meaning of section 133 (b), at all events with respect to the endorsers subsequent to the forged endorsement. He could bring an action on the bill itself against the prior endorsers. In order to hold the endorsers he would have to duly present the bill for payment, and if payment were refused he would have to protest the bill for non-payment, or the endorsers would be discharged. He therefore has the right to present the bill for payment, and to protest it. If he presented it for payment and it was paid, he could not of course protest it for non-payment. The effect, therefore, of payment would be to discharge the liability of the prior endorsers.

Section 139 expressly declares that a bill is "discharged by payment in due course," and that "payment in due course" means "payment to the holder in good faith and without notice that his title is defective." The holder mentioned in section 139 is the holder defined by section 2, namely, "the endorsee of the bill who is in possession of it." It would be a remarkable result if payment under such circumstances would discharge the prior endorsers, and would not discharge the drawee or acceptor who actually pays. The reference to good faith in section 139 refers to the good faith in making the payment and not to good faith of the holder. A way in which the various provisions of the statute relating to this question can be reconciled is to confine the statement in section 49, that "no right to retain the bill or give discharge therefor can be acquired through or under the forged signature," to the case of a party claiming to be the holder through the forged signature only. If he claims to be the holder through a genuine endorsement subsequent to the forgery, the other provisions of the Act mentioned would appear to give the right to present for payment and receive payment and give discharge to the drawee acceptor.

As above stated, we are not aware of any judicial decision on this very important question, but we think it probable that when it comes up for decision, the decision will be on the lines indicated.

NOTE.—This answer was given on the assumption that the foreign law as to forged endorsements is the same as English law. It was held in *Embericos* v. *Anglo-Austrian Bank* (1905) 1 K. B. 677, that the validity of an endorsement in a foreign country is governed by the law of that country, and it is usually the law in Continental Europe that a payment of a bill in good faith and without negligence is valid even though the endorsement be forged. The Embericos case arose out of the drawing by a Roumanian bank of a cheque on a London bank payable to the order of A. A endorsed the cheque in Roumania specially to B of London. The cheque was stolen by A's clerk who forged B's signature, and it was cashed in good faith and without gross negligence by a bank in Vienna. At the time of such payment the endorsements were apparently regular and in order, which is all that is required under Austrian law. The Vienna bank endorsed the cheque to C in London, who presented it to the bank on which it was drawn and received payment. In an action by A against C for conversion, Walton, J., gave judgment for the defendant on the ground that the Vienna bank had secured a good title to the cheque under Austrian law which the English courts were bound to recognize, and had assigned that title to C. On appeal, this judgment was affirmed.

FORGED ENDORSEMENT.

Question 394.—"A" presents a camp order at a certain bank to be cashed. The bank does not know "A," but is familiar with the firm the order is issued on. The bank refuses payment, telling "A" to present the order at the office of the firm. "A" does this and the treasurer of the firm gives "A" a cheque on their bankers. "A" returns with the firm's cheque and has the same cashed, the paying bank presuming "A" to be the party to whom the cheque is payable. The cheque is passed through the clearing house in the usual way and is honoured by the firm's bankers. It transpires later that " A " had stolen the camp order forging the foreman's signature as well as the payee. The firm claim the paying bank paid the cheque to the wrong party. Can they collect from the bank or did the treasurer identify the payee when he accepted the endorsed camp order from him giving him the cheque?

Answer.—The firm may decline to allow the cheque to be charged to its account if it was not endorsed by the party in whose favour it was drawn.

FORGED AND IRREGULAR ENDORSEMENTS.

Question 395.—Bank "A" deposits a cheque through the clearing house against Bank "B." The cheque bears several endorsements, one being by power of attorney. There are funds to meet the cheque. A month or so after the clearing Bank "B" finds (1) that the power of attorney is not legal, or (2) that one of the endorsements is a forgery. The cheque bore the endorsement of the clearing bank as follows: "The Bank of ——, Montreal." Which bank loses?

Answer.—The point involved is simply this: "What is the position of a bank which, after the lapse of a month, discovers that one of the endorsements on a cheque, paid by it in ordinary course to another bank, is forged or unauthorized?

The answer to this is that, under section 50 of the Bills of Exchange Act, the bank which received the money under these circumstances is bound to repay it, providing notice is given in accordance with the terms of the Act.

NOTICE OF FORGED SIGNATURE.

Question 396.—Sub-section 1 (b) of section 49 of the Bills of Exchange Act says in effect that the drawer shall have no right of action against drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amounts so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery, etc.

(1) In the case of cheques on banks, who but the drawer himself is to give him notice of such forgery, or to determine the date on which he acquired such notice? Should not the fact of his signing to the bank a receipt of his cheques, and a statement that he finds his account correct to a certain date, oblige him to give notice within a year of that date to give him right of action against the bank to recover on a forged cheque paid before that date?

(2) If I send Robert Waugh a notice by registered letter that I hold his note, if the note is a forgery is he bound to notify me of this fact within a year from the date of my notice in order to escape liability on the note? If the bill is drawn say at three months from date, it would be long overdue before he need repudiate it.

Answer.—(1) The notice of forged endorsements referred to in the proviso to sec. 49 of the Bills of Exchange Act is clearly the discovery by the drawer that it had been paid on a forged endorsement. As to when he acquires this knowledge is entirely a question of fact, which would have to be proved in the same way as any other question of fact, in the event of the bank on which he made the claim resisting the same on the ground that he had not given notice within the proper time.

(2) Section 49 does not apply to the case described, where a man receives notice that a note has been discounted bearing his name, which he knows to be a forgery. Waugh, on receipt of the notice must repudiate the note *at once*. See *Ewing* v. *Dominion Bank* (1904), A. C. 806.

Legal Holidays—Rights of a Bank to Accept or Pay its Customer's Cheques on a Holiday.

Question 397.—(1) Has a bank any right to refuse or accept a cheque on a legal holiday?

(2) In Montreal English banks do business on Province of Quebec holidays:

(a) If a bank were to refuse a cheque on account of insufficient funds, on such a holiday, would the customer have a case for damages against the bank?

(b) If there were sufficient funds immediately after opening of business the next day?

Answer.—(1) With reference to holidays other than Sunday, we think a bank may accept a cheque if presented on a holiday, and if it has no funds we see no legal reason why it should not so state. It can of course decline, because of the holiday, to do anything in the matter, and we think should, for its customers' protection, decline to give any answer unless it is prepared to honour the cheque.

(2) We think that it is quite legitimate for a bank to transact business on these holidays with any person who wishes to do so. We do not think the bank would be liable to a customer for anything that takes place on the holiday merely because it is a holiday. If, however, payment of a cheque is refused on such a day it must be re-presented before it can be protested or notice of dishonour given.

WITHDRAWAL OF CREDIT BALANCE ON LEGAL HOLIDAY—POSITION OF HOLDER OF OUTSTANDING CHEQUE.

Question 398.—A gives his cheque to B in payment of an indebtedness, on the evening preceding a legal bank holiday. The bank remains open for the transaction of business on the holiday, when A withdraws the balance at his credit, thus cutting the holder of the cheque out of his money. Has the holder of the cheque any recourse against the bank? His plea would be that he naturally assumed that the bank was not open on the holiday and held his cheque until the first business day thereafter, when he found the funds had been withdrawn.

Answer.—A bank is under no obligation whatever to the payees or holders of unmarked cheques. There is nothing to hinder the bank making payments to its customers outside of the regular business hours, whether on a legal holiday or not, and its sole obligation is to pay its customers' cheques when presented, if it then has funds in hand to meet them.

CHEQUE MARKED BEFORE HOURS.

Question 399.—A cheque was presented between 9 and 9.30 a.m., and paid by the bank to the payee, who wished to get his business transacted early. At 9.30 a.m., the drawer of the cheque gives the bank written notice to stop payment of the same. Would the bank be in any way responsible, having paid the cheque before hours?

Answer.—We think it is too late for the drawer to stop payment, and that the bank is protected.

REFUSAL OF BANK TO PAY CUSTOMER'S CHEQUE FOR WHICH THERE ARE FUNDS.

Question 400.—May the teller of a bank refuse to cash a cheque which is correct in every particular and for which there are funds? The case in mind is one where the teller had accidentally become aware that it was the drawer's intention to order the bank not to pay, but the teller knew of no reason why the drawer should stop payment, and no such notice had been received by the bank when cheque was presented.

Answer.—As the customer who drew the cheque is the only person who would have any right to complain of its refusal, and as the teller's action was in accordance with his wishes, although not formally notified, the refusal was in order. We think the teller took the risk of the drawer changing his mind, and of making the bank liable for having refused a cheque for which there were funds.

STOP PAYMENT OF CHEQUE—RIGHT OF HOLDER IN DUE COURSE TO RECOVER FROM DRAWER.

Question 401.—A gave B a cheque for $25 in part payment of purchase money for B's business. The cheque was drawn on bank C, and was cashed by B at bank D. A stopped payment of the cheque, consequently bank C refuses to pay the cheque, which is protested. Can bank D sue A and recover the amount of the cheque?

Answer.—Bank D has the right to recover from A or B if it is a holder in due course. See the case of *McLean* v. *Clydesdale Bank,* 9 A. C. 95, in which it is said: "If payment of a cheque is stopped, the holder may look to the *drawer* and endorsers, subject to the provisions of the Act applicable to the rights and liabilities of the parties upon the dishonour of a bill."

PROMISSORY NOTE. NOT ALWAYS DISCHARGED BY THE SURETY'S PAYMENT THEREOF.

Question 402.—A joint and several promissory note is made by three promissors, one signing as surety, the other two being the debtors. The surety has to pay the note; can he not recover from either of the other promissors?

Answer.—We think that under the circumstances mentioned he is entitled to bring suit against either of the other promissors on the theory that as he was surety for their joint and several debt, which he has had to pay, they must jointly or severally reimburse him.

NOTE WITH TWO MAKERS, ONE BEING IN FACT A SURETY—RIGHT OF SURETY TO COMPEL SUIT.

Question 403.—C. and company hold a joint note of A and B, which is dishonoured. Can B, who is in fact a surety for A, compel the holders to sue A for the amount?

Answer.—Yes, if the holder will not accept the amount from the surety and put him in a position to sue the principal debtor, the surety can compel the holder to sue.

PAST-DUE NOTE WITH TWO PROMISSORS HELD AS COLLATERAL TO A RENEWAL NOTE TAKEN FROM ONE OF THEM.

Question 404.—A note was discounted by a bank on which were two joint promissors, one of the two, to the knowledge of the bank, having added his name as surety for the other. At maturity the bank renewed the bill for the debtor, taking a note signed by himself alone, but retaining the original note as collateral security. This was done without notice to the guarantor. Is the latter released by this extension of time?

Answer.—The position of the parties in a case of this kind was fully discussed in the judgment of the Supreme Court of Canada in *Gorman* v. *Dixon,* 26 S. C. Can. 87 (1896). The whole question involved in the present case is whether there was an understanding between the bank and the debtor that, notwithstanding the time given, the bank's claim against the surety was to be retained. The fact of the retention of the joint note seems to indicate this, and if such were the understanding Smith would, under the ruling in the case referred to, still remain liable.

RENEWAL OF A JOINT AND SEVERAL NOTE, THE OLD NOTE BEING RETAINED.

Question 405.—A bank accepts a renewal of a joint and several note with one of the original names dropped, but retaining the original note. Further renewals of the same kind are afterwards taken. In the event of the bill being finally dishonoured, can the bank sue on the original bill?

Answer.—The answer depends on the intention of the parties, which is a question of fact. The fact that the bank retained the original note undischarged suggests that the parties intended that the bank's rights upon it should remain, and if there were nothing to displace this the finding would probably be in this direction; but these questions of fact generally depend upon various surrounding circumstances, and each case must be judged by itself.

NOTE BEARING ACCOMMODATION ENDORSEMENTS RENEWED BY A BANK WITH ONE ENDORSEMENT OMITTED.

Question 406.—A bank discounted for the promissor a note with three endorsers (accommodation). When this note becomes due the bank receive through the mails a note stated to be a renewal note, but from which the signature of one endorser is absent. If the bank put this through (considering the signature of the missing endorser of little financial value), could the remaining endorsers claim release on the grounds that the bank had released without notice to them some of the security to the said note?

Answer.—Unless the bank had knowledge of an agreement between the endorsers that all were to join in the renewal, we think that the bank would be a holder in due course of the renewal note and entitled to recover.

AUTHORITY OF AN EXECUTOR TO GIVE A RENEWAL OF A NOTE MADE BY THE TESTATOR.

Question 407.—The executor of an estate endorses, "Estate of C. B. by A. D. executor," on renewal of a note current during the lifetime of the testator. Has he as executor a right to bind the estate in this way?

Answer.—If this were to be regarded as a new contract of endorsement, the executor's authority would depend on the terms of the will, and it would probably be found that he had no authority to bind the estate in this way. Regarded, however, as an extension of the obligation created by the testator, we think that it would be held good, and the original liability of the estate would be continued.

NOTE WITH JOINT AND SEVERAL PROMISSORS, ONE BEING IN REALITY A SURETY, HELD OVERDUE.

Question 408.—B and C are joint and several promissors on a note held by A, it being known that C is in fact a surety, B being the real debtor. The note matures, and A accepts a year's interest in advance, and holds the note overdue. This is repeated until it has been held for four years in all. By this time B is insolvent, and the debt cannot be recovered from him.

(1) Should the note have been protested to hold C?

(2) Is C discharged by reason of the note being held four years?

Answer.—(1) C is liable on the note without protest.

(2) C would be released if A, at the time of any interest payment, made a binding agreement with B to extend the time of payment for a year; and the acceptance of the year's interest in advance would certainly strengthen a claim made by C, that the holder had so bound himself that he could not sue till the year was out.

JOINT AND SEVERAL NOTE CHARGED AFTER MATURITY TO THE ACCOUNT OF ONE OF THE MAKERS — RATES OF INTEREST CHARGEABLE FOR THE TIME OVERDUE.

Question 409.—A and B are liable jointly and severally on a note which has been discounted by the bank, B being, in effect, a surety only. The note is unpaid, and some time after maturity the bank charges it to B's account, who has had a balance with him at all times exceeding the amount of the note. Can they charge him with the full rate of interest, or only such a rate as they allowed on his deposit?

Answer.—The bank is entitled to collect the full amount of the note and interest until it is paid by the parties, or either of them, or until the bank chooses to charge it against B's account. In the Province of Ontario the bank has a right of set off, but is not bound to exercise it, and pending its exercise the deposit on the one hand and the note on the other, remain as two separate liabilities, each carrying its own results as to interest, etc. The law in Quebec as to set off differs somewhat from that in Ontario, and what we have said above might not apply there.

NOTE.—In the Province of Quebec when two persons are mutually debtor and creditor of each other, from the moment that the two debts become equally liquidated and demandable, they are mutually extinguished by sole operation of law in so far as their respective amounts correspond. C. C. Arts. 1187, 1188.

SET-OFF—RIGHT OF A BANKER TO CHARGE BALANCE DUE ON A NOTE TO A CURRENT ACCOUNT.

Question 410.—A customer, keeping a current account, has a demand note to the bank upon which two payments have been made. When he is in funds, have we authority to charge balance of note to a current account without cheque?

Answer.—If payment of the note has been demanded, and is overdue, the bank would be entitled to set-off the amount against a balance due to the customer, though it is usual to give a customer notice before exercising the right of set-off.

DISHONOURED DRAFT—RIGHT OF A BANKER TO CHARGE A PORTION OF THE AMOUNT TO THE DRAWER'S "PRIVATE ACCOUNT," WHERE THERE ARE NOT SUFFICIENT FUNDS IN HIS BUSINESS ACCOUNT.

Question 411.—A customer has two current accounts (one an ordinary business account, the other entitled "private account"). A cheque on an outside point deposited by him, has been dishonoured, protested, returned and charged back to his account, but there are not sufficient funds to pay it all. Is the bank legally justified in charging his "private account" with the balance of the item, or with as much of it as this account will permit? No promise was made that his "private account" should not be charged back if necessary (as well as the other account), with any returned dishonoured item.

Answer.—If the two accounts are strictly as described, that is, both accounts of the same party, representing money held in the same right—that is, not as trustee, etc., there is no question that the bank would have a right to set off against any balance in either account an overdraft in the other. This is in effect what is proposed.

NOTE.—But if the course of dealing was such that a customer having two separate accounts was allowed to draw upon one of them irrespective of the state of the other, the bank could not combine them against him without a reasonable notice that the former course of dealing would be discontinued. (See *Buckingham* v. *London and Midland Bank,* (1895), 12 T. L. R. 70, and *Kirkwood* v. *Clydesdale Bank* (1907), 15 Sc. L. T. R. 413).

MISSING ENDORSEMENT NECESSARY TO COMPLETE TITLE.

Question 412.—The "A" Bank presents to the "C" Bank through the clearing house a cheque payable to Smith & Jones, or order, and bearing the endorsement of John Smith and the presenting bank, which is paid; the want of Smith & Jones' endorsement is not discovered until some days afterwards, when it applies to the "A" bank to procure the correct endorsement. The bank contends that the paying bank has lost its recourse against them by not returning the item on the day it was deposited, and also because it has been cancelled, but offer to procure the endorsement as an act of courtesy. The "C" Bank contends that it has the right to demand the proper endorsement, or, failing that, repayment of the amount of cheque. Kindly favour me with your opinion.

Answer.—This case does not come within the rules of the clearing house, or the rules respecting endorsements. It is a simple case of money paid to a party who has no title to receive it, under a mistake of fact, which he is bound to return on discovery of the mistake. The cancellation is not material; it can be revoked by the paying bank. This case differs from one where money is paid on an item bearing a forged or unauthorized endorsement, because the bank was not in any sense a holder of the cheque, there being a gap in the title. The *London and River Plate Bank* v. *Bank of Liverpool* case dealt with a bill of exchange paid to a holder who had an apparently clear title, and the amendment to our Bills of Exchange Act, passed in 1897, now section 50, deals with similar cases.

NOTE MARKED "PAID" BY A BANK BUT NOT ENDORSED BY PAYEE—DOES POSSESSION OF THE NOTE DISCHARGE THE PROMISSOR?

Question 413.—A customer leaves a note with the bank payable to his order for collection, but does not endorse it. Does the promissor receive a proper receipt and discharge of the debt when he has paid the note, which has been stamped "paid" by the bank? Or should the bank insist on an item, payable to order, being endorsed when it is delivered for collection?

Answer.—Without doubt the promissor has received a sufficient discharge of his debt. The bank is acting as the agent of its customer when it stamps "paid" on the note, and by no possible construction of law could the customer again recover the amount due under that obligation from the primissor. There are, however, good reasons for the universal practice of having such bills endorsed, and it should not be lightly departed from.

CHEQUE PAYABLE TO BEARER PASSED THROUGH CLEARING HOUSE WITHOUT ENDORSEMENT—RIGHT OF DRAWEE BANK TO REQUIRE A RECEIPT.

Question 414.—A cheque is drawn on Bank B reading as follows: "Pay to the order of John Jones or bearer." This is passed through the clearing house from bank A, not endorsed by John Jones. Can bank B insist on his endorsement?

Answer.—Bank B cannot insist on his endorsement, though the bank is entitled to require a receipt for the amount paid out upon the cheque.

NOTE PAID BEFORE MATURITY—REBATE OF INTEREST.

Question 415.—A discounts at the date of making a six months' note signed by B, payable without interest. B pays the note at the expiration of one month. Who is entitled to the rebate of interest, A or B?

Answer.—Neither is "entitled" to rebate, and the bank need not allow any. If it accepts payment subject to rebate, it would pay the amount of rebate to either A or B at its discretion, but in practice rebate is allowed to the party retiring the obligation.

STATUTE OF LIMITATIONS.

Question 416.—A note was due February 10th, 1897. Will the Statute of Limitations protect you if action is taken February 11th, 1903, or must it be entered in court on or before February 10th, 1903?

Answer.—The authorities are conflicting as to whether or not an action could have been commenced on the 10th of February, 1897. It is plain, however, that the cause of action was at all events complete on the 11th February, 1897, and that from this day the Statute of Limitations would run. As there cannot be two elevenths of February in one year, the full six years would expire on the 10th February, therefore an action begun on the 11th February, 1903, would be too late.

NOTE.—In the Province of Quebec the time required for the prescription of an action on a bill or note is five years, reckoning from maturity—C. C. Art. 2260 (4).

PAID CHEQUES.

Question 417.—Has a bank a legal right to retain paid cheques?

Answer.—In the absence of any special agreement, we think the customer is entitled to receive back his paid cheques, on giving the bank a proper and sufficient acknowledgment of the state of his account.

BOND OF INDEMNITY—AMOUNT.

Question 418.—Why is it that in taking a bond of indemnity twice the amount of the lost cheque or draft is asked? Is it to cover possible law costs?

Answer.—There is no set rule that twice the amount of the item shall be specified as the limit of indemnity. The bank's only concern is to see that the amount of indemnity recoverable shall be sufficient to cover the amount of the item and such additions as could possibly be made to it by way of costs, etc.

STERLING DRAFT OF LONDON, ENFACED PAYABLE AT A BANK IN SAN FRANCISCO.

Question 419.—If a bill is drawn in sterling from Dunedin, N.Z., on London, England, and enfaced payable at the Bank of   in San Francisco, does the San Francisco bank then become the drawee of the bill, and can the bill be protested for non-payment in San Francisco? Would your answer apply equally to a draft drawn from Montreal on Toronto, and enfaced payable in Hamilton, where there is no conversion of sterling into dollars?

Answer.—If by the phrase "enfaced payable at a bank in San Francisco" is intended such a crossing as is commonly used in Canada, it is in effect only a request that the San Francisco bank will negotiate the draft, which we would not consider an integral part of the instrument. That being the case the bill is not payable at the office of the San Francisco Bank, and is not dishonoured if they will not comply with the request.

A draft drawn in Montreal on a bank in Toronto, crossed with the request that some other bank will pay it in Hamilton, is not, in our opinion, thereby made payable at the latter point. If the request is not complied with the only result that would follow, so far as we can see, would be that the purchaser might have a claim for damages against the drawer, for failure of an implied understanding that the draft would be paid to him in Hamilton.

It is the custom in Canada to permit certain large financial institutions to place a memorandum on their cheque forms to the following effect: "This cheque is negotiable (or payable) at par at any office of the bank in Canada."

It has long been settled that encashment of such a cheque by a branch of the bank other than that on which it is drawn, is only a negotiation of it, and we should suppose the "enfacement" to which you refer to be of the same character.

There are occasional cases here where a cheque drawn by a customer is marked "good" by the drawee bank, and crossed by it with instructions to another branch of the bank to pay the same. This we should regard as a domiciliation by the acceptor of the cheque, and it would probably be dishonoured if not paid in accordance with such instructions.

CLEARING HOUSE—PRESENTATION OF CHEQUE IN PERSON BY MANAGER OF BRANCH BANK TO SAVE REGULAR EXCHANGE.

Question 420.—(a) Is a branch of a bank justified in refusing to pay cheques drawn upon it and presented in person by the manager of another bank in a neighbouring town?

(b) If not, could the clearing house regular exchange be deducted?

The idea of presenting cheques in person is to save the exchange which would be payable if the cheque were forwarded through the usual channels.

Answer.—(a) No—if the presenter is duly authorized to receive payment.

(b) No.

CLEARING HOUSE RULES—DELAY IN RETURNING CHEQUE.

Question 421.—Bank A clears a cheque through the clearing house to bank B. Bank B neglects to return it within the time stated by the local clearing house rules. Bank A refuses to give bank B a clearing credit slip on these grounds. Can bank B hold bank A upon protesting the cheque? We hold the cheque can be legally returned any time up to three o'clock irrespective of rules made by any clearing house.

Answer.—No clearing house rule can take away any right that a bank may have under the statutes. If bank A presented the cheque instead of sending it through the clearing house, it would be entitled to an immediate answer. It is not certain that the courts would recognize an agreement between banks that all items not returned by a certain hour might be regarded as paid, but a bank that elects to disregard the clearing house rules to which it has subscribed and falls back upon its strictly legal position, would expose itself to the loss of its clearing house privileges.

Clearing House Rules—Returned Items.

Question 422.—Has not the paying bank until three o'clock the legal right to refuse to pay cheque presented through the clearing house, even though there be a local rule limiting the time to twelve o'clock

Answer.—The legal right of a bank to refuse payment of an item presented through the clearing house is not affected by the rules of the clearing house, but such an item cannot be returned through the clearing house unless notice of the objection is given before twelve o'clock.

Returned Items—Local Arrangement Between Banks.

Question 423.—Bank A cleared to bank B a cheque which is returned by bank B at 1 o'clock: reason, account closed. In this town there are six banks but no clearing house. There is a local arrangement that all dishonoured items must be returned before 12 o'clock. Could bank A refuse to give bank B a debit error clearing slip for the above cheque?

Answer.—Unless bank B has specifically waived its rights under the Bills of Exchange Act, no local arrangement can deprive it of these rights, and the cheque having been returned to bank A within the time prescribed by the Act, bank B is entitled to settlement. The attitude that should be adopted towards a bank which enters into an arrangement and then disregards it and falls back upon its legal rights is, of course, another matter.

ADVICE OF DRAFT—RESPONSIBILITY FOR DELAY.

Question 424.—The B of H makes a draft on the B of T with advice, "pay to the order of John Jones the sum of $.... and charge to our account." When the draft is presented the bank say they have not received an advice. How long must the customer keep it before he can enforce payment?

Answer.—If drawees refuse to pay on account of want of advice, holder has no recourse against drawee, but has immediate recourse against drawers.

NOTICE TO LIMITED COMPANY—"LTD." OMITTED FROM ADDRESS.

Question 425.—In sending a notice through the post to a "limited" company, would the omission of "Ltd." from the address on the envelope affect the legality of the notice?

Answer.—A notice addressed to a joint-stock company, with the word "limited" omitted from the address, would nevertheless be a good notice.

REQUEST FOR PAYMENT OF A NOTE SENT TO THE MAKER IN AN UNSEALED ENVELOPE.

Question 426.—A bank notifies the promissor on a note held by it, requesting payment. The envelope containing the notice was not sealed. Can the party claim damages from the bank for the open letter?

Answer.—This gives the party no claim for damages, unless the statement in the notice is false and it is sent maliciously.

DEPOSIT RECEIPTS—NEGOTIABILITY.

Question 427.—Are deposit receipts transferable by endorsement?

Answer.—The usual form of deposit receipt is, we think, a receipt for money, and an undertaking to "account" for it, and not an unqualified promise to pay it. A document reading "Received of ——— £ ——— to account for on demand" has been held not to be a promissory note; and other cases where the agreement was to "account" for money have been decided in the same way. We think, therefore, that a deposit receipt in the customary terms would not be transferable by endorsement in the same way as a note would be transferable.

NEGOTIABILITY OF DEPOSIT RECEIPTS.

Question 428.—Referring to my enquiry as to the negotiability of deposit receipts (Question 427), subjoined is a copy of the wording of the receipt which I had in mind:

> Received from J. Smith on deposit, for a period of not less than three months from this date, and subject thereafter to ten days' notice of repayment or withdrawal, the sum of one hundred dollars, to be accounted for upon surrender of this certificate to J. Smith with interest (until date of notice only) at the rate of three per cent.

Answer. With regard to the receipt in the form submitted, we should not suppose that such a receipt would be negotiable. It would only have that quality if it could be held to be a promissory note, and we think that under the rulings in the cases referred to in the reply to Question 427, the promise to "account" for the amount to J. Smith cannot be held to be an unconditional promise to pay to the holder of the receipt. For the same reason it is not transferable by endorsement, in the sense in which that word is used in the Bills of Exchange Act, but the claim which it represents may be transferred by a simple assignment endorsed on the document by the depositor.

The practical questions arising out of these points are as to the obligation of the bank holding the money to account for the same to an endorsee, or its rights if it should make payment to an endorsee.

A mere signature in blank is not in itself authority to the bank to pay the party holding the document, and it would probably not protect the paying bank if, as a matter of fact, the party receiving the money had no right to receive it. An endorsement in blank might, however, be a very important link in the chain of proof advanced by the party holding a deposit receipt so endorsed, in support of a claim that the money had been duly assigned to him. This does not affect the bank's right to refuse to recognize the assignment without further proof.

If the receipt is endorsed by the depositor "pay to C D or order," payment to C D would probably be good, as such an endorsement would doubtless be held to constitute C D the agent of the depositor to collect the money, and the depositor could not dispute what was done in consequence of his own act; but, for the reason mentioned below, it would be well to take the endorsee's receipt for the money as "on behalf of" the depositor.

If the receipt is presented for payment by another bank, bearing the endorsement of the depositor either in blank or with an order to pay to such bank, payment might, no doubt, be safely made to the bank presenting the receipt, but it would be well to require a receipt for the money in which it is declared that the receiving bank is acting as an agent for the depositor, *e.g.*, "Received from ——— on behalf of A B (the depositor) the amount of the within deposit receipt and interest." The object of this is to ensure that if there is any mistake in the matter the bank receiving the money will be liable either to the depositor, as for money received on his account, or to return the amount as paid under a mistake. It is to be noted that a guarantee of the endorsement does not cover this point; that merely protects against forgery, and does not guarantee that the bank has authority to collect the amount.

DEPOSIT RECEIPTS "NOT TRANSFERABLE."

Question 429.—Would not the bank's responsibility as to the proper disposal of moneys held on deposit receipt be lessened if the words " not transferable " were omitted from such receipts?

Answer.—We think not. A deposit receipt as ordinarily worded, in which the bank indicates that the money " will be accounted for," is not transferable in the sense in which promissory notes are transferable. The addition of the words " not transferable " does not alter the effect of the form; it merely calls attention to its nature. On the other hand if the deposit receipt were so worded that it was in effect a promissory note, and so negotiable in the ordinary sense, the bank would be liable to any holder of the receipt to whom it might be negotiated, and would lose some advantages, as, for instance, the right to hold the funds against a debt of the depositor.

LOST DEPOSIT RECEIPTS.

Question 430.—In the case of a lost deposit receipt, should the depositor be required to furnish a bond before paying the amount?

Answer.—A deposit receipt is not transferable; the banks do not incur any responsibility to any party, other than the depositor himself, who may hold the document, unless the banks are notified of a transfer of the claim. It is therefore safe enough to pay a lost receipt without a bond.

ENDORSEMENT ON DEPOSIT RECEIPTS.

Question 431.—Do you, or do you not, think that the simple endorsement by a bank of any deposit receipts passing through its hands guarantees all previous endorsements? I think it does, but the point is often disputed.

Answer.—The endorsement on deposit receipts of the ordinary non-negotiable form are not endorsements in the sense of the Bills of Exchange Act, and do not necessarily involve the consequences which an endorsement on a bill of exchange carries with it. The practical effect of such an endorsement as described by our correspondent is no doubt very much the same. If a bank cashes its deposit receipt, which has come through the hands of another bank and is endorsed by the latter, it would have a right to demand a return of the money should it appear that the bank receiving it had, as against the owner of the receipt, no right to receive it. The depositing bank receives the money on the implied representation that it has a right to collect the amount.

Similar questions arise with respect to a cheque which has been paid by the bank on which it has been drawn. Endorsements on cheques do not bring the parties under the contract of endorsement with the bank on which the cheque is drawn. The drawee is not a holder for value in due course when the cheque is paid, but a bank can recover the money from the party to whom it has been paid if, as a matter of fact, the party to whom it was paid had not a good title. His liability is not that of an endorser, but simply of a party who has received money under circumstances entailing upon him the liability to refund it. The case of *Ryan* v. *Bank of Montreal* (12 Ont. Reports, p. 39, and 14 Appeal Reports, Ontario, p. 553), and the cases therein cited, contain much information respecting the principles involved.

LETTERS OF CREDIT—TRANSFERABILITY.

Question 432.—Is the right to draw under the ordinary letter of credit, issued by a Canadian bank, transferable by an endorsement on the credit to the following effect: "For value received I hereby transfer this letter of credit and the balance due thereunder to C D ?"

Answer.—We do not think that the assignment of the letter of credit would transfer the right to draw, and there is no amount due under the credit, at any rate by the bank on which it is drawn. We see no difficulty, however, in the party giving a power of attorney, under which a third person might avail himself of the credit, but only in the name and on the behalf of the party accredited.

LETTER OF CREDIT—NEGLECT TO ENDORSE PAYMENT.

Question 433.—Bank A issues a general letter of credit for $5,000, which is presented by holder at bank B, showing endorsements of $1,000. Bank B pays $3,000 against it. Later it is presented at bank C showing (according to their statement) endorsements amounting to only $1,000. (Bank B apparently having neglected to endorse their payment) and a further $3,000 is drawn. Holder disappears with letter of credit. In view of actual proof missing, has bank C any hope of avoiding a loss? Would this not suggest extra precautions for banks to take?

Answer.—This would be a matter for adjustment between the three banks concerned, but failing adjustment the rights of the parties would have to be decided on the evidence. Bank C could probably establish its claim without production of the letters of credit, in which case it would have recourse against bank A, which in turn would probably have recourse against bank B. The circumstances here are somewhat unusual, but serve to emphasize the importance of issuing letters of credit only to persons of undoubted integrity.

DEBENTURES HELD BY A BANK AS COLLATERAL—NEGLECT OF BANK TO PRESENT COUPONS PROMPTLY.

Question 434.—A bond with coupons attached is held by a bank as collateral security. They neglect to collect the coupons as they mature, and ultimately when the bond matures it is found to be uncollectible. The customer claims credit for the overdue coupons. Is the bank responsible?

Answer.—The relations between the bank and the customer are scarcely indicated with sufficient clearness to enable us to answer this question definitely. On the bare facts stated we should say that as the customer was not entitled to receive the coupons, but was bound to leave them or their proceeds with the bank as security, the duty of collecting them fell on the latter. If then, as a matter of fact, the coupons would have been paid if duly presented at maturity, the bank would be responsible for the loss caused by their non-presentation.

INSTRUCTIONS BY WIRE "TO NOTIFY AND PAY"—NEGLECT TO NOTIFY—LIABILITY.

Question 435.—A New York bank instructs a Halifax bank by wire as follows: "Notify and pay A, $1,000." Through oversight A was not notified, and, according to his statement, lost a valuable contract through not receiving the money. Has he any claim on the Halifax bank or the N. Y. bank for the loss incurred?

Answer.—A clearly has no right of action against the Halifax bank. Whether he would have a claim against the New York bank, or the New York's customer who was sending the money, would depend altogether on the facts.

Under ordinary circumstances, and in the absence of any special arrangement or understanding, the New York bank would probably not be under any liability to the party to whom the money was to be transmitted, and, of course, the Halifax bank could not be held responsible if the New York bank was not. The question is, however, one which could only be answered with a full knowledge of all the facts.

TELEGRAPHIC TRANSFERS.

Question 436.—A bank at E F's request sends this telegram to a correspondent: "Notify and pay to AB ten thousand dollars to be applied on account of C and D bonds." The money is paid by the correspondent to AB with directions to apply as above, but AB does not apply it as directed. Can the bank or its correspondent be held responsible by EF, on the ground that the correspondent should have seen that the money was applied as directed?

Answer.—We think not. The instructions were to pay the money to AB, and to inform him of the application to be made of it. If these instructions were carried out the matter would rest entirely between EF and AB.

ORDERS DRAWN BY FIRM OF LUMBERMEN ON THEMSELVES. PAYABLE ON DEMAND.

Question 437.—Do orders drawn by a firm of lumbermen, or their agent at one of their depots, on themselves at their head office or on another depot, and payable to bearer on demand, come under sec. 136 of the Bank Act?

Answer.—The sole question is whether or not the orders are designed to circulate as money. If they are they come under the section; if otherwise they do not. Whether they are intended for circulation and to take place of money, would depend on the facts, which would have to be considered in connection with each case.

CIRCULATION REDEMPTION FUND—NOTES ISSUED IN EXCESS OF PAID-UP CAPITAL.

Question 438.—Does the Circulation Redemption Fund guarantee the notes of a bank where they are (1) issued in excess of the paid-up capital, or (2) signed or issued by an unauthorized officer?

Answer.—If the notes are in either case notes of the bank for which it is legally liable, then they must be paid out of the Redemption Fund if not redeemed by the bank.

REDEMPTION OF CIRCULATION.

Question 439.—A customer of a chartered bank in Coboconk has a cheque for $50,000 on another chartered bank in Lindsay. He wishes to take up a note in the Coboconk bank. Upon tendering the cheque he is informed that there will be $50 exchange, whereupon he goes to Lindsay, draws the cash in notes of the Lindsay bank and tenders them in payment of the note. Can the Coboconk bank refuse to take them? Or can it exact a charge that would reimburse it for the express charges to the nearest point of redemption for the Lindsay bank's notes? If the Coboconk bank cannot make a charge it is bound to be at a loss. If it had cashed the cheque at par it would have been out two or three days' interest; by not cashing it at par it is out the interest and express charges.

Answer.—The bank is not bound to accept any money in payment of a note, except such gold coin as comes within the terms of the Currency Act, notes of the Dominion Government, commonly known as legal tenders, or its own notes. It is, therefore, as a matter of legal right, in a position to exact whatever charge it may choose to ask, as a condition of its accepting payment by cheque on another bank, or by notes of another bank.

Question (submitted in continuation of the subject of the above question and answer).—If bank notes are redeemable at par all over Canada, by arrangement at specific points and by courtesy or mutual agreement wherever a bank has a branch or there is a branch of a chartered bank, how could a charge be exacted or the notes be refused without breaking through this arrangement? Suppose they had been deposited instead of offered in payment of a note, I do not see what is to prevent any bank being loaded up with a lot of other bank notes on which it will have to pay express. If the rule applies to small accounts why not to large ones?

Answer.—In answering the previous question we had, of course, reference entirely to the legal point involved; but we would think it very much to be regretted indeed that banks should take the position of refusing the notes of other banks offered in payment of debts, when the same are presented in a reasonable way and are legitimately in the hands of the party presenting them. Probably if a case occurred where, to get rid of uncurrent notes requiring transportation to a distance, any bank should pay out such notes knowing that they were to be tendered to another bank in payment of a debt, the latter would be quite justified in refusing to take them except at a discount.

We are not aware that there is any mutual agreement between the banks that they will unconditionally redeem the notes of other banks at all points. This is undoubtedly the practice, and it would be unfortunate if anything should happen to break it; but, on looking at the matter simply from the legal standpoint, the bank need not take on deposit notes of other banks if it chooses to refuse them, and it is not bound to take any money that is not legal tender in payment of a debt. If it waives its legal rights, and accepts notes of other banks on which it has to pay express charges, this must be regarded as done because the practice fits in with the common interests of all the banks.

The Redemption of Canadian Bank Notes.

Question 440.—Canadian bank notes are only payable in gold or legal tender at the place of issue (usually the head office of the bank), whereas, by section 70 of the Bank Act, is it not intended that these shall be so payable at the several points therein?

Answer.—It is the duty of the bank to pay its notes in gold or legal tenders at the place of issue.

As far as section 70 is concerned, it is, of course, clear that a bank must redeem or pay its bills in gold or legal tender notes at its various redemption agencies. There is this distinction, however, to be observed, that if a bank should not have established such agencies, while it would have contravened the law and become liable to the penalties imposed under the Act, the absence of an agent to whom its notes could be presented for payment, would scarcely constitute dishonour of the notes.

The full answer to another question: What obligation is a bank under with regard to the payment or redemption of its note issues would be as follows: A bank is bound to take such notes in payment of debts at any of its offices; it is bound, under penalties, to provide redemption agencies at certain points named in the Act, and at such agencies to pay any notes presented in gold or legal tender; and it is bound to pay in gold or legal tenders all notes presented at the place at which they are by their terms made payable. There are other obligations following on failure, etc., which need not be discussed.

DOMINION NOTES—CONVERTIBILITY.

Question 441.—Is the currency of Canada a convertible or an inconvertible one?

Can I take $1,000 in legal tender notes to the Receiver-General and demand gold?

Can I demand gold or legal tenders for bank notes if I present them at place of issue?

If I present them at a country branch, can I still insist on being paid in gold or legals?

Section 72 (1) of the Bank Act provides for payment of $100 in legals when demanded, but I cannot find answers to the above in the Act.

Answer.—The currency of Canada is convertible. The Government will pay gold for legal tender notes when presented to the proper officer, and the banks are bound to pay gold or legal tenders for their notes when presented at the place of payment. Whether or not the bank is bound to redeem its notes in gold or legal tender at any country branch depends upon the terms of the note itself. In practice they are usually made payable at the head office only, and while the bank is bound to receive them in payment of debts at any office, it is only bound to redeem them at the place or places where they are made payable. There is a further provision as to the redemption agencies.

Section 72 (1) of the Act does not touch this question. Its effect would appear to be merely to impose on banks the duty of paying up to $100 in legal tenders, and so far to deprive them of the right to meet their obligations in gold.

NOTE.—Under section 4, sub-section 1 (d) of the Finance Act, 1914, the Governor in Council, in case of any real or apprehended financial crisis, may suspend the redemption in gold of Dominion notes. The Governor in Council by sub-sec. 1 (b) of the same section, may also authorize the chartered banks to make payments in their own notes instead of in gold or Dominion notes.

BANK NOTES AND LEGAL TENDERS.

Question 442.—Is a private individual forced to receive payment of a debt in bank notes, or may he demand legal tenders to any amount?

Answer.—No person can be forced to accept bank notes in payment of a debt. He is entitled to be paid in gold coin or Dominion notes which, as their common name implies, are a "legal tender." The option of paying in gold or legal tender notes rests with the debtor. The creditor is bound to accept American gold ($5 pieces and upwards) at its face value, or British gold at $4.86 2-3 to the sovereign, (in both cases good tenderable coin being understood) or legal tender notes.

(See note to question 441).

LEGAL TENDER NOTES—PAYMENT UNDER SEC. 72 OF THE BANK ACT.

Question 443.—Would you construe sec. 72 of the Bank Act to mean that a bank may pay sums up to $100 in ones, twos or fives only to a party who desires such a payment? Can it compel one who demands payment in legal tender of a claim for over $100 to take payment in ones, twos and fives, or must the bank pay in large legal tender notes or gold?

Answer.—The creditor must accept in payment of any obligation of the bank, no matter what the amount may be, anything that is a legal tender, but the creditor has the right to say that to the extent of $100 in any payment, the bank must pay him in one, two or five dollar Dominion notes. Except in so far as the bank is controlled by the latter provision, it is in the same position as any other debtor, and may at its option pay its obligations in small or large legal tender notes, or in such coin as is a legal tender under the Currency Act.

(See note to question 441.)

NOTES OF A BANK CIRCULATED IN A DISTRICT WHERE IT IS NOT REPRESENTED.

Question 444.—The Bank of X has a small capital and its circulation limit is frequently reached. The notes of another bank not represented in the district are paid out by it, and as a result the other banks in the neighbourhood receive large amounts of these bills and are obliged to pay express charges to the nearest point of redemption.

Is not this a violation of the spirit of the Bank Act and also in some sense unfair to the public, who accept these bills in good faith, and find that they cannot exchange them for legal tender or gold? Why should not other banks in the district refuse to receive such bills except at a discount?

Answer.—We think that the wrong to the public may be left out of consideration, as they take the bills voluntarily in payment of debts due them.

The question as to the duty of the issuing bank in such a case as this, is, however, open to discussion. We think that they might very well undertake to redeem for the time being all notes of the kind they are circulating, and it would seem clear that this could usually be done without loss. If, however, the matter could not be amicably arranged in this way, we would think it open to serious objection for the other banks to refuse to accept the bills from their customers. The adoption of such a course, even under the stress of unfair conditions such as those mentioned, would be bound to disturb the public confidence in bank notes, a confidence that has been largely increased by the arrangements brought into effect at the last revision of the Bank Act. At the present time any person, in any part of Canada, who receives a bill issued by a Canadian bank, knows that he has something that he can use without question, and at its face value, whenever he wishes to pay a debt with it or deposit it in his bank, and it would be a serious matter to disturb this condition.

BANK NOTES — FRAUDULENT ISSUE OF, TO A FRIENDLY DEPOSITOR, BY A BANK ON THE EVE OF FAILURE.

Question 445.—Would it not be possible for the officers of a bank on the eve of failure, without breaking the law, to pay a friendly depositor the amount of his balance in notes of the bank on the understanding that he was not to use them until the danger had either passed or else the bank suspended, and that until the notes were presented for payment interest would be allowed as though the amount were still on deposit?

Answer.—The clauses of the Act respecting the note issue seem to cover quite fully the case you mention, although it is always possible for a fraud to be committed under them which might not be discovered. Section 61 authorizes the issue and re-issue of notes "for circulation." This would invalidate an issue made under such conditions as those you quote, as the notes would clearly not be issued for circulation, and they would probably be held, under section 131, not to give a preferential claim. We think, however, that the claim would be held to come directly under clause 63, as such a transaction would be really hypothecation of the notes of the bank by one of its officers to secure a debt, notwithstanding the form in which it was placed, and the fact that the party receiving them held them and brought them back for redemption after the failure of the bank, would be apt to lead the Court to take that view. We would think also that it would be most unlikely that a bank manager would lend himself to such a transaction, as he would thereby render himself liable to the penalties set out in section 155.

REDEMPTION OF CANADIAN BANK NOTES PRESENTED AT FOREIGN AGENCIES.

Question 446.—Is the custom of agencies of Canadian banks in the United States of discounting the notes of their own banks, in contravention of section 71 of the Bank Act?

Answer.—We do not think that for a foreign office of a Canadian bank to redeem its own notes at a discount is a contravention of section 71. We think it improbable that the section would be held to apply outside of Canada. There are difficulties in its application there respecting questions of legal tender, exchange, etc., that would lead to this conclusion.

BANK NOTES—THEIR REDEMPTION BY BANK WHEN MUTILATED.

Question 447.—What is the smallest portion of a Canadian bill that must remain to entitle the holder to its redemption at face value?

Answer.—Theoretically, if a person. without having any portion of a bank bill, can prove conclusively that he is the owner of the bill, and that it has been destroyed, he is entitled to have it redeemed in full, on giving indemnity. In this respect he is in the same position as the owner of a lost promissory note of the ordinary kind. There is, however, this serious practical difference in dealing with lost or destroyed bank notes, that while indemnity can be given for an ordinary note, because it can be easily identified, no indemnity is practicable for a lost note, for the obvious reason that identification would be impossible.

We think that the principle followed by banks in redeeming mutilated notes is to pay them in full if satisfactory evidence of the destruction of the missing part is forthcoming. If not, and if the missing part is an important portion of the bill, it is difficult to see what claim the holder has.

REDEMPTION OF PARTIALLY DESTROYED NOTES.

Question 448.—By what authority in law do some banks and the Receiver-General's assistants pay torn or mutilated notes sent them for redemption, at less than the full amount?

Answer.—We do not know of any authority for the practice mentioned respecting the redemption of mutilated notes, but it is reasonable and all banks which issue notes are interested in its maintenance as a matter of self-protection. The promissory note of a bank is in law very much the same as any other promissory note, and in case of its destruction, in whole or in part, the holder would theoretically have the same right to recover as if it were the promissory note of a private person. If he brought suit in such a case he would have to satisfy the court as to the facts and provide suitable indemnity. The provision of indemnity in connection with missing parts of a bank note is, however, difficult if not impossible, and because of this the practice has grown up of allowing a proportionate amount for the portion of the bill which is presented for redemption. It is reasonable, and it might be difficult to establish even at law a larger claim.

OLD ISSUES OF CANADIAN BANK NOTES.

Question 449.—Why is it that the old issues of the Bank of Nova Scotia and Merchants Bank of Halifax notes are not worth their face to-day?

Answer.—We presume that the notes referred to were issued before 1st July, 1871, and that they are consequently payable in the old currency of Nova Scotia. Such obligations are, by section 17 of the Currency Act, 1910, payable in the equivalent of the currency of Canada, of which 73 cents is made equal to 75 cents of the old currency of Nova Scotia. If in any sums there is a fraction of a cent in the equivalent in the old currency of Canada, the nearest whole cent shall be taken.

CLEARING HOUSE SYSTEMS.

Question 450.—Every clearing bank in London, England, keeps a clearing account with the Bank of England, where is also kept an account known as the "Clearing Bankers' Account." Daily settlements are made by crediting or debiting this account as balances happen to be in favour of or against each bank, without the employment of coin or currency. Why has this simple system not been introduced in Canada in preference to the more cumbrous method of settlement by exchange of "legals"?

Answer.—The immediate settlement in London is made by a cheque or voucher, representing a transfer from one account to another, but that does not cover all the work involved, for the clearing banks probably make deposits in and withdrawals from the Bank of England daily. Settlement under our clearing system involves only one deposit or one withdrawal daily, and that in large notes good only between banks, so that the system cannot properly be called "cumbrous" even as compared with London.

The London system has grown out of the unique position of the Bank of England, and could probably not be copied anywhere else in the world. Canadian banks would not generally be likely to keep their reserves in the form of a deposit with another bank, even if a bank willing to accept such deposits should be found.

CLEARING HOUSE SETTLEMENTS.

Question 451.—Bank A goes to the Clearing House and remits to bank B a total of $200,000. Bank B in turn remits to Bank A a total of $150,000. How is the settlement of the $50,000 difference effected?

Answer.—While B may owe A $50,000, it may be owed the same sum by C. What it owes, or is owed, is the difference between the total amount that all the other banks deliver to it and the total amount that it delivers to them. All the banks who are debtors to the others on the balance thus shown pay the net sum due by them into the Clearing Bank. When all have paid in, the Clearing Bank pays out to the creditor banks the various amounts due to each. The amounts due to the Clearing Bank by the debtor banks aggregate the total sum which it has to pay to the creditor banks, and when it has made these payments the transaction is completed.

CLEARING HOUSE RULE NO. 14.

Question 452.—Will you kindly give an illustration of the working of Rule 14. The first sentence contains 150 words, and its meaning is not as clear as it might be.

Answer.—The rule referred to deals with exceedingly complicated conditions, but its meaning is clear, and we doubt if it could be simplified very much. It is intended to cover a case where for any reason the banks which have balances against a defaulting bank prefer not to have their items returned, but to get the benefit of the balances due the defaulting bank by other banks, a right which under some circumstances might be very important. The phraseology is affected by the fact that the defaulting bank does not owe, or stand as a creditor of, the several banks in the clearing house, but owes its debtor balance to the chairman of the clearing house (Rule 11, Clause c). This is necessary in order that some person or body should have a legal claim.

CLEARING HOUSE SETTLEMENTS.

Question 453.—Bank "A," in Winnipeg, telegraphs its Calgary branch to deposit with bank "B," in Calgary, $200,000 for account of bank "B's" customer. Settlements in the Calgary clearing house are made by draft on Winnipeg. Is bank "B" entitled to a draft on Winnipeg on the date of the deposit, or may the Calgary branch of bank "A" tender its own cheque on itself, to be cleared in the regular way?

Answer.—The Calgary branch of bank "A" is justified in tendering its official cheque for $200,000 to be cleared in the regular way. It is assumed that no limit that would apply to the transaction has been established by rule of the clearing house or by usage amongst the banks, also that the question does not arise out of reluctance on the part of bank "B" to become a creditor of bank "A" to the extent of $200,000.

DEPOSITS MADE BY BANKS—BANKING ETIQUETTE.

Question 454.—Bank "A" sends in an item to bank "B" due to-day for acceptance, bank "B" accepts it, and bank "A" immediately sends it in on their deposit of the same day. The item is for $4,500. Bank "A" asks bank "B" for a settlement. Bank "B" protests to bank "A" against sending in such items on deposit on the same day they are due, claiming that it is not customary to do so. Bank "A" replies that it is quite customary when the items are large and there is no clearing house in the town. The custom heretofore prevailing here was the accepting of items the day they are due and sending them on deposit the next day. What is the custom in other places in this respect?

While bank "A" was legally justified in their action, was it not violating a regular and established custom?

Answer.—There was no impropriety in bank "A" requiring immediate payment of the item.

BANK DEPOSITS AND SETTLEMENTS.

Question 455.—We are in the habit of making our deposits in local banks the first thing in the morning after the bank is opened. After our deposit is made we receive a cheque for a large amount, $5,000, which we send for deposit. The bank refuses the cheque, saying that it accepts but one deposit a day. Can we force the bank to accept such deposit? If not, can we ask for a settlement the next day even if we have settled with the said bank the previous day?

Answer.—The local arrangement between banks regarding deposits and settlements would govern, but the only legal obligation upon the drawee bank is either to decline to cash the cheque on presentation or decline to honour it; it could not be forced to accept a deposit.

"CUT" COLLECTION RATES BETWEEN BANKS.

Question 456.—I recently received two letters from a branch of a certain Canadian bank offering to make collections in the town and vicinity (where it had recently opened), first at 1-10 of 1 per cent., minimum 10c., and later at 1-16, minimum, 8c., evidently desiring to take this class of business away from a bank which had been established at this point for many years. I replied that we were quite satisfied with our present arrangements for collecting, and had no intentions of making a change.

I would be glad to have your opinion as to the propriety of the action of a bank in cutting rates in this manner.

Answer.—The members of the committee are unanimously of opinion that competition of the kind referred to is most inadvisable, and that banks should not help it on by accepting "cut" rates. The question is, however, one respecting which we could scarcely do more than express the views of the members of the committee unofficially.

BANK CHARGES—PROVINCIAL GOVERNMENT CHEQUES.

Question 457.—Dominion Government cheques are by law payable at par at all chartered banks. Have the different Departments of Provincial Governments the same privilege?

Answer.—No. Unless a special arrangement is made by the Provincial Government, or its bankers, with banks operating within its borders. Section 98 of the Bank Act does not apply to cheques of the Provincial Government or any of its departments.

DRAFT PURCHASED FROM A BANK—DEATH OF PURCHASER BEFORE DELIVERY OF DRAFT TO HIM.

Question 458.—A customer ordered and paid us the money for a draft on Hong Kong, which we obtained from our home office. Before delivery he died. What is our position in the matter? The draft is payable to a party in Hong Kong, and we understand that our customer was forwarding the amount on behalf of others.

Answer.—We do not see that you can do anything but hold the draft until someone has taken out letters of administration. It is quite likely that it would be safe to send the draft to the payee, but if for any reason the payee was not entitled to receive the draft you would by adopting such a course make yourself responsible to the administrator.

OPENING AN ACCOUNT — PERSON TRADING UNDER FIRM NAME.

Question 459.—A firm carrying on business as Jones & Smith sell out to Robertson, who carries on under the former title. He opens an account with a bank under the name "Jones & Smith for A. Robertson, sole proprietor." Does the bank require proof that he is entitled to trade as such and cash cheques payable to Jones & Smith?

Answer.—It would be quite proper for the bank to require evidence that Robertson is entitled to collect debts due to the old firm of Jones & Smith and is continuing to trade under that name in respect to new business.

INDIVIDUAL TRADING IN NAME OF COMPANY—ALL HIS PROPERTY LIABLE FOR BUSINESS DEBTS.

Question 460.—A starts business under the name of a company, and is registered as the sole proprietor. Is a bank in advancing the company money for its business afforded any additional security by taking notes made by A and endorsed by the company?

Answer.—It is inferred that the registered company is not a corporation. A's endorsement by himself of the obligation of the company adds nothing to the bank's security. If either A or the company was sued on the notes and judgment obtained, all the property that A possessed, whether in the business or outside of it, would be liable to execution under the judgment.

ACCOUNT OPENED IN THE NAME OF "JOHN SMITH IN TRUST FOR THE PEOPLE'S CO-OPERATIVE CO., LTD."—AUTHORIZATION OF COMPANY NECESSARY.

Question 461.—At the request of the People's Co-operative Company, Limited, an account is opened in the name of "John Smith, in trust for the People's Co-operative Co., Ltd.," the account to be operated by John Smith. Should formal assent be obtained from the company to operate the account in this manner, and in any case is the bank under any obligation to see that moneys are properly expended? Supposing Smith opened the account should the bank, knowing the company's existence, obtain its assent?

Answer.—The company under the hand of its duly authorized officers should request the bank in writing to open the account and give instructions as to its conduct. So long as such instructions are complied with, the bank is under no responsibility to see that the moneys are properly expended.

Smith should not be allowed to open an account in that name without the intervention of the company. In particular it would be dangerous to let him, without express written authority, endorse and deposit to such account cheques in favour of the company, and dispose of the proceeds by his own cheque.

OPENING AN ACCOUNT "IN TRUST"—ENQUIRY AS TO NATURE OF TRUST UNNECESSARY AND INADVISABLE.

Question 462.—A B goes into a bank and asks to open an account in his name "in trust." Is it necessary, when opening such an account, for the bank to obtain from him particulars as to whom or for what the funds are in trust, thus showing such money is real trust funds and not his own?

Answer.—No. See section 96 of the Bank Act. It is probably better that the bank should not charge itself with any knowledge of the trust.

TRUST ACCOUNT — RESPONSIBILITY FOR DISPOSITION OF FUNDS—POSITION OF BANK.

Question 463.—A savings account is opened under the following name:

Mary Jones in trust for Henry Jones (minor).

(a) Is the bank responsible to Henry Jones for the disposal of the funds?

(b) Is there any objection to the practice?

Answer.—(a) No, but the bank would be liable if it knowingly permitted any breach of trust.

(b) If by "the practice" is meant the opening of an account as stated, the answer is "no."

TRUST ACCOUNTS.

Question 464.—(1) Is there any objection to opening an account in the following form: "Mary Brown, administratrix, John Jones, attorney," the power of attorney from Mary Brown to John Jones being duly lodged with the bank?

(2) If John Jones should draw a cheque for the balance of the above account, and deposit it to a new account as follows: "John Jones, in trust for Mary Brown, administratrix," would the bank be under any responsibility for permitting such a transfer?

(3) If Mary Brown should revoke the power of attorney referred to in Question 1, would that affect John Jones' right to draw against his trust account?

(4) Would the bank be justified in refusing to pay the amount at credit of the trust account to John Jones, if so instructed by Mary Brown?

Answer.—(1) The account in this form, although irregular, has nothing in it to which objection need be taken. We think it must be regarded as the account of Mary Brown, administratrix, with a statement that John Jones holds a power of attorney to draw cheques upon it.

(2) The transfer of the balance to the account of "John Jones, in trust," is one of those things for which the bank might or might not be liable. He had certainly full power to withdraw the money, and he also had power, without implicating the bank in any way, to deposit money to a trust account; but we should think there is a danger in this case of the bank being held to be a party to any breach of trust that may be involved.

(3) The revocation of the power of attorney would not affect John Jones' right to draw cheques on his trust account.

(4) We think that where a bank has been made aware for whose benefit the trust fund is held, they could not without risk pay it out to the trustee against the instructions of the *cestui que trust.* But she could not demand payment from the bank. She must take legal proceedings in the usual way. The legal title to the money is in the trustee, and the bank could not, except at its own risk, act without his authority. Under Ontario practice it can relieve itself from any difficulty by paying the amount into court.

ACCOUNT OF A COMPANY OPERATED IN THE NAME OF THE COMPANY'S AGENT. LIABILITY OF THE COMPANY.

Question 465.—An account is opened in the name of John Adams, the cheques on which bear above his signature the name of a mining company. He is known to be an employee of the company, acting in the absence of the formally authorized agent. Would the company be liable for an overdraft in such an account caused by the payment of wages, and if not would Adams be personally liable?

Answer.—The question involved is one of agency, depending on the facts of the case and could not be answered without a full statement of the facts. We would suppose that the company would not be directly responsible, that the agent alone would be personally liable, but he might have a claim on the company for money expended on their behalf, and in that indirect way the company might be responsible to the bank.

ACCOUNT IN NAME OF "ESTATE OF JOHN SMITH," THE LATTER BEING STILL LIVING.

Question 466.—(1) Is it usual to open accounts in name of "Estate of John Smith" or "Succession of Jean Smith" while John Smith is living?

(2) If so opened by another, should he not show written authority to transact Smith's business?

Answer.—We may say that it is not customary to open accounts in this manner, although there is nothing to prevent anyone from conducting his own account in such fashion.

(2) The party operating an account in this style on behalf of someone else should, we think, be required to produce written authority.

ACCOUNTS IN THE NAMES OF MINORS.

Question 467.—(1) What is the Ontario law relating to money deposited by minors?

(2) Which would you advise—the opening of a savings bank account in the name of a minor, or in the name of a parent or guardian in trust for the minor?

Answer.—(1) There is no general law in Ontario respecting money deposited by minors, but under the terms of section 95 of the Bank Act, banks may receive deposits from minors, and repay them to the minors at any time. (See the section referred to, and note the limitation to a sum of $500, where a minor could not, except for the section, make deposits.)

(2) Notwithstanding the authority given by the Act, we would think it prudent to take a deposit in the name of a parent or guardian in trust for a minor, rather than directly in the name of the minor. This, however, would apply only in cases where the minor is quite young.

Deposit in Trust for a Minor—Protection from Creditors of Depositor.

Question 468.—If a father made a deposit in his own name in trust for his son, would that protect the money from the father's creditors?

Answer.—If the money were deposited to the credit of the father in trust for the son, the protection from the father's creditors would depend on whether the money was really the property of the son or not. If it were, the father's creditors could not touch it.

Married Woman—Bank Account in Her Spinster Name.

Question 469.—What is the best way to transfer a bank balance standing in the name of a spinster to her married name? Is a declaration of transmission an actual necessity?

Answer.—We think no declaration is necessary. The only question involved is one of identity. The heading of the account may be changed on advice from the depositor that in consequence of her marriage she takes and will hereafter sign her married name; or she may draw for the balance due her and redeposit in her new name.

If she had money at her credit in her maiden name, and drew a cheque in her married name, the bank (assuming that it was aware of all the facts) would not only be quite safe in honouring the cheques, but probably would be bound to do so, except in the Province of Quebec.

Note.—If the marriage domicile is in the Province of Quebec, in the absence of an ante-nuptial contract, the bank balance would, from the moment of the celebration of the marriage, fall into the community of property (C. C. Art. 1272) and pass under the sole control and administration of the husband. (C. C. Art. 1292).

MARRIED WOMAN IN PROVINCE OF QUEBEC—RIGHT TO OPERATE A BANK ACCOUNT.

Question 470.—Can a married woman (in the Province of Quebec) operate a bank account without the authority of her husband, even when living in community with him, provided the balance does not at any time exceed $500 (or when the aggregate does not exceed $500)?

Answer.—The case of such a depositor would be covered by sec. 95 of the Bank Act, and she would be free to deposit and withdraw money without her husband's consent, provided that the balance does not at any time exceed $500, no matter what the aggregate amount of the transaction may be.

Note.—A married woman in the Province of Quebec may make deposits up to $2,000 in the Savings Banks of the Province, and withdraw the money without the authority or assistance of her husband. See Quebec Savings Bank Act, R. S. C. c. 32, sec. 29.

ACCOUNT IN NAME OF "JOB SMITH, 'SHERIFF.'"

Question 471.—Job Smith, sheriff, places a sum of money in current account in his name as sheriff, the money deposited being court funds. Smith is dismissed from office and a successor appointed. Would a bank be justified in paying Smith the amount on his cheque signed "Job Smith, sheriff"—he no longer holding office—or would an order from the court be necessary? Or again, could the bank pay his successor without incurring liability?

Answer.—Unless the bank has had some special arrangement with the sheriff, covering an intimation that the money at his credit is official money payable to himself or to his successor in office, or unless there is some local statute which controls the matter, the deposit in question must be regarded as one which is repayable to John Smith personally. Under ordinary circumstances, where an account is opened in the name of "Job Smith, sheriff," the word "sheriff" must be regarded as a mere description.

POWER OF ATTORNEY TO OPERATE JOINT ACCOUNT SIGNED BY ONLY ONE OF THE DEPOSITORS.

Question 472.—Suppose we have the following account on our books: "James E. Jones and Angela Jones or either of them." The following letter of authority in connection with the operation of the account is held:

To the Manager,
..............Bank........ .

Dear Sir.—Please open a deposit account in the name of Jas. E. Jones and Angela Jones, or either of them. We authorize you to pay and charge against said account all sums evidenced by cheques drawn upon your branch or other vouchers signed by Jas. E. Jones and Angela Jones, or either of them.

Yours truly,
JAS. E. JONES.
ANGELA JONES.

J. E. Jones, finding it necessary to leave town for a short time, gives the bank a full power of attorney in favour of one Pat Smith. Would the bank be wrong in charging the above account with a cheque signed by "J. E. Jones, per Pat Smith, attorney."

Answer.—The point does not appear to have come before the Courts and something might depend upon particular circumstances, but the committee recommend, as the safer course, that the power of attorney be signed by both parties to the joint account.

ACCOUNT IN NAME OF TWO EXECUTORS.

Question 473.—An account stands in the name of two executors. Is it not legal, according to the Bank Act, for either alone to draw?

Answer.—If the circumstances connected with the deposit show that it consists of moneys held by two executors as such, probably either may draw, though it is customary and safer to require both signatures. But if there is an express understanding that both are to sign, or if such an understanding might be implied from the circumstances connected with the deposit, this would, of course, alter the case, as the provisions of any contract must be complied with by the bank.

The law in Ontario empowers any one executor to withdraw money standing at credit of a deceased depositor, but if money were deposited to the credit of the executors, it would be safer to require the signature of all. It is difficult to say what effect sec. 96 would have in such a case, but as in cashing a cheque drawn (*e.g.*), by one of two trustees the bank would take on itself the burden of disproving any claim set up by the other that there was an understanding that both should sign, it is clear that it would be taking a serious risk quite unnecessarily. Sub-section 2 of sec. 96 may be held to be confined to cases where, but for that section, the bank could not take the deposit at all.

DEPOSITS PAYABLE TO TWO PERSONS OR EITHER OF THEM.

Question 474.—The holder of a deposit receipt, on account of his age procures a renewal receipt in favour of himself and wife "or either of them," so that either may draw the money. Subsequently the wife presents the receipt endorsed by her husband (his mark witnessed), and asks for a renewal in favour of herself alone. The deposit receipt is one which is marked "not transferable." Does the bank take any risk in renewing the deposit receipt in the form which she desires?

Answer.—We think not. The original depositor, while he was in a position to deal with the deposit as he pleased, placed the amount at his wife's disposal, and the bank is therefore justified in acting on her instructions.

SURVIVORSHIP PROVISION IN JOINT DEPOSIT RECEIPT FORMS.

475.—The case of *Smith* v. *Gosnell,* reported in the April (1919) number of the Journal, has given rise to a great deal of discussion. Mr. A. J. Brown, K.C., of Montreal, General Counsel to the Association, with whom were associated Mr. Wallace Nesbitt, K.C., and Mr. A. W. Anglin, K.C., of Toronto, have had the receipt forms in use by the various banks before them, and their opinion is as follows:

"Counsel gave careful consideration to the various forms in use by the banks in regard to the above, and examined the reported Canadian legal decisions in regard thereto. Counsel are unanimously of the opinion that it is inexpedient for a bank to accept deposits on the basis of forms in which the right to a survivor to withdraw moneys deposited in the joint account purports to be given. It is, of course, legitimate for a bank to accept deposits in the names of two or more persons. It is not, however, considered advisable that there should be any effort to give authority to a survivor of joint depositors to withdraw the deposit. Whatever the form in which the receipt stands, or in which the deposit receipt is given, it may be that, owing to the ownership at the time of deposit of the funds deposited, or the purpose for which or intent with which the deposit is made, or because of the provisions of provincial laws with regard to succession duties, or because of other facts and circumstances, the Courts might hold that the survivor would not or could not obtain title, or complete title, from the bank, or could not give a proper and sufficient discharge to the bank."

JOINT DEPOSITS—GARNISHEE ORDER AGAINST ONE OF THE DEPOSITORS—DUTY OF BANK.

Question 476.—Jones and his wife have a joint account (either to draw). A garnishee order is served on the bank against Jones. Could his wife, after the service of the garnishee order, withdraw all or any part of the funds from the bank?

Answer.—We are of opinion, notwithstanding the English case of *Macdonald* v. *Tacquah,* 13 Q.B.D. 535, that the bank could not afford to take the risk of disobeying an order of the court to hold the deposit, especially as in certain cases the joint deposit might not mean a joint right of property. The special laws of the Province of Quebec would be additional reasons against such a course of action. We think the bank should wait until the rights of the parties have been determined in due course.

TRUST DEPOSITS—WITHDRAWAL BY ONE OF TWO TRUSTEES.

Question 477.—Are we to understand from sub-section 2, section 96, Bank Act, that a deposit in the names of two parties can be withdrawn by one of them? If one of the depositors died would not his legal representatives have to join with the survivor in order that the bank might properly pay over the money?

Answer.—The section quoted refers to trust deposits, and its terms would seem wide enough to protect the bank in paying such a trust deposit to one of two trustees. We have, however, hitherto expressed the view that it is not altogether wise to rely on this section of the Bank Act, and we do not think that it is the practice of the banks to accept a receipt of one trustee in such cases. If, however, one trustee is dead, it is quite clear that the surviving trustee has entire control, and that the legal representative has no rights, so far as the bank is concerned.

POWER OF ATTORNEY TO OPERATE TRUST ACCOUNT.

Question 478.—(1) A customer having only a trust account signs a full power of attorney in favour of B, but signs only his usual signature, without the words "in trust." Can B operate the trust account?

(2) A customer has two accounts, one in trust and the other in his own name. He gives a full power of attorney to B and signs it twice, first his own signature and then with words "in trust." Can B operate both accounts?

(3) Customer referred to in No. 2 inserts in power of attorney form the words "for the undersigned, etc., for all own funds and trust account, to make, sign, etc.," and signs twice as in No. 2. Can B operate both accounts?

Answer.—(1) If the trustee has power to delegate his authority to another, and deposits the power of attorney in the bank expressly for such purpose, his attorney would be entitled to operate the trust account, but it would be better to have the customer add the words "in trust" to his signature on the power of attorney. A full power of attorney not given to or held by the bank would not authorize B to operate the trust account.

(2) See answer above. In this case it would be better to have a separate power of attorney covering each account.

(3) See answer above. Separate powers of attorney would be better, but one would suffice. The double signature makes no difference.

POWER OF ATTORNEY TO A MINOR.

Question 479.—May one under age be lawfully appointed the attorney of a merchant to conduct his bank account?

Answer.—Yes; the fact that he is under age does not disqualify him.

Note.—In the Province of Quebec only those minors who have become emancipated may act as attorneys (C. C. Art. 1707). Emancipation takes place (a) by marriage, or (b) by authorization of Court (C. C. Arts. 314, 315).

PARTIAL PAYMENT ON CHEQUE MADE BY BANK AT TIME OF DEPOSIT—DEPOSIT SLIP SHOWING DEDUCTION MUST BE SIGNED BY CUSTOMER.

Question 480.—A customer brings in a cheque for $500 with the request that $450 be deposited and $50 paid in cash. A deposit slip is made out for $450, and under the heading "local cheques" the $500 is entered in figures. In the adjoining column are written the words "Less cash 10/5" and $50 in figures is written under the $500 and the balance $450 is there struck. At the bottom of the column the depositor signs. Does this deposit slip give the bank a receipt for the $50 cash which the customer received? Would it be possible for the customer six months afterwards to make a claim that he had deposited a cheque for $500 and received credit in his account for $450 only?

Answer.—If the deposit slip was made out and completed before the signature of the depositor was affixed, it would be accepted as evidence of the payment to him of $50 in cash and be a sufficient answer to any subsequent claim on his part to have received credit for less than he had paid in.

PRESENTATION OF CHEQUE FOR WHICH THERE ARE NOT SUFFICIENT FUNDS—OFFER OF PAYEE TO DEPOSIT TO CREDIT OF DRAWER THE AMOUNT NECESSARY TO COVER CHEQUE—RESPONSIBILITY OF BANK FOR DISCLOSING STATE OF CUSTOMER'S ACCOUNT.

Question 481.—X, who may or may not be a customer of the bank, presents a cheque to his order for which there are not sufficient funds. He offers to make good the difference by depositing to the account of the drawer of the cheque the necessary amount to have the cheque accepted or paid. Could the maker of the cheque make any claim against the bank for making known the state of his account?

Answer.—The bank may not disclose to any other party the state of a customer's account, and it is doubtful if it would be justified in accepting deposits for the purpose named. The bank would certainly be entitled to decline to accept such deposits or to refer to its customer at its discretion, and in deciding its course need only consider its relations with its customer to whom alone it is responsible.

REASONABLE TIME FOR PRESENTATION — CHEQUE DATED JANUARY, 1899, OFFERED FOR DEPOSIT IN JANUARY, 1900.

Question 482.—A customer wishes to deposit with his bank, on 5th January, 1900, a cheque drawn on another bank dated 5th January, 1899. Is the bank justified in refusing to take it on deposit only because it is dated a year back.

Answer.—We think the bank should not refuse the cheque only for the reason stated. We cannot see what risk the bank would run in taking such a cheque on deposit, although of course the bank may take or refuse to take on deposit whatever items it chooses. The most that could be said is that the cheque might be held to be overdue under section 70, sub-section 2. That would not, however, lessen the responsibility of the customer to the bank if it should be dishonoured.

COPPER COINS—RIGHT OF BANK TO REFUSE DEPOSIT, OR TO EXCHANGE FOR SILVER.

Question 483.—In a town where Canadian one cent pieces are not in circulation, could a banker refuse to accept them over the counter in a deposit, or could he refuse to give silver for them on demand? What penalty could be inflicted for a refusal to accept them?

Answer.—A banker may refuse any deposit however made up, and could refuse to exchange silver for copper. He would be compelled to accept copper coin up to twenty-five cents in payment of a debt, copper being legal tender up to that amount.

INTEREST ON DAILY BALANCE—METHOD OF COMPUTING.

Question 484.—A customer who is allowed 2 per cent. interest on his daily balances of $5,000 and over in current account is in the habit of making deposits the last thing in the day to make his balance over the $5,000. This is largely withdrawn the next morning and made good again before closing. The effect is that the minimum balance in each day is considerably below $5,000, but the balance at the close of business is always considerably in excess. On what balance should interest be allowed?

Answer.—There is no doubt that the term "daily balance" means the balance standing in the account at the close of the business each day, and in the account mentioned the customer would be entitled to interest on the balance as appearing in the books at the close of business. Such an account may not be worth the interest paid, but the bank's remedy is to cancel or amend the contract.

BANK PASS BOOK—CREDIT AND DEBIT ENTRIES.

Question 485.—Why is it that the side of a bank cash book marked "debit" is used for credit entries, and the side marked "credit" for making debit entries?

Answer.—The debit side of the cash book comprises items to the debit of cash, and necessarily, therefore, to the credit of the account specified. Similarly, the credit side comprises items to the credit of cash and therefore to the debit of the accounts specified. In other words, you are debtor by what you receive and creditor by what you pay away.

AGREEMENT TO MAINTAIN MINIMUM FREE BALANCE—ACCOUNT DRAWN BELOW STIPULATED AMOUNT.

Question 486.—A current account bears interest at 3 per cent., $10,000 to be free. If the balance should run below that amount, say to $4,000, would you consider the difference between the actual balance and the amount to be held free in the nature of a loan, and charge 5 per cent. interest?

Answer.—Presumably the free balance is intended to represent remuneration for services of some character rendered by the bank, and what would be a fair adjustment should the balance fall below the amount agreed upon would no doubt depend upon the nature of the services rendered, and the other facts of the matter.

TIME DURING WHICH A BANK SHOULD PRESERVE VOUCHERS.

Question 487.—By section 92 of the Bank Act it is provided that the liability of a bank to repay moneys deposited and interest, shall continue notwithstanding any statute of limitations or any enactment or law relating to prescription. Since in an ordinary business account, not prescribed, it is requisite that proofs of the claim shall be produced in case of contestation, does it not follow in view of the above mentioned section that a bank should preserve indefinitely all vouchers for transactions in a customer's account, or the verifications of the account given by the depositor?

Answer.—The point to which our correspondent draws attention is very important. Even before the last revision of the Bank Act it was doubtful if the Statute of Limitations would run in favour of a bank from the date of the last transaction in an account — indeed it was probably the law then that prescription of a claim would only count from the time at which a demand had been made.

The present position of the law does in our opinion make it more essential still that the bank shall keep the vouchers connected with its deposit accounts, practically forever.

REFUSAL TO PAY MONEY TO DEPOSITOR UNDER INFLUENCE OF LIQUOR.

Question 488.—Can a depositor under the influence of liquor legally draw his money out of his savings bank account?

Has such a depositor any ground for action against the bank for refusing to give the money?

Answer.—This is a very difficult question to answer. If a depositor were so much under the influence of liquor as to be quite incapable of understanding what he was doing, the bank would probably not be discharged by his signature to a receipt for money paid to him in that condition. If, however, he was but slightly under the influence, and quite sensible of what he was doing, the bank could not refuse.

Whether the depositor would have a ground of action against the bank for refusing to give the money would depend entirely upon the above points. If the bank was justified in refusing because of his unfitness to transact business, he would have no claim. If, however, they made the mistake of refusing when, notwithstanding his being under the influence of liquor, he was quite capable of transacting business, the bank would probably be liable for damages.

WITNESSING SIGNATURE ON VOUCHER FOR WITHDRAWAL OF DEPOSIT.

Question 489.—Is it wise for the officials of a bank to witness the signature by mark of a customer on a voucher for the withdrawal of a deposit?

Answer.—It is better to have an independent witness, but this may not always be practicable. The teller who pays the items should never be permitted to sign as witness.

GARNISHMENT OF MONEY ON DEPOSIT.

Question 490.—If a person has money on deposit in a bank can that money be garnisheed?

Answer.—Yes.

MARRIED WOMEN IN PROVINCE OF QUEBEC—BANK DEPOSIT—GARNISHMENT FOR DEBT OF HUSBAND.

Question 491.—A married woman in the Province of Quebec has a deposit in a bank. Can it be seized under judgment against her husband? There is no marriage contract.

Answer.—We are advised that it can be seized.

DEPOSIT "A B FOR C D"—GARNISHMENT FOR PRIVATE DEBT OF A B.

Question 492.—A B deposits money as follows: "A B for C D," but C D to have no power to draw. Can a debtor garnish this money for a private debt of A B?

Answer.—If the money, as a matter of fact, is A B's money, it can be garnisheed. If it is C D's money, of which A B is trustee only, it cannot be touched by A B's creditors.

GARNISHMENT FOR PRIVATE DEBT OF MONEYS DEPOSITED IN A TRUST ACCOUNT—POSITION OF BANK.

Question 493.—A garnishee is served on a bank. The only funds held in the name of the party garnisheed are in a trust account. Is the bank bound to hold the account to satisfy the garnishing order, (a) provided no declaration as to whom or for what the money is "in trust" has been made to the bank, (b) provided the trust has been stated?

Answer.—This is a case for the exercise of discretion. If the trust has been stated and the banker has no reason to be suspicious, he would probably be safe in disregarding the garnishee. If the trust has not been stated the banker may reasonably ask for particulars, and, if the depositor refuses, or gives unconvincing particulars, the funds should be held pending a further order from the Court.

PASS-BOOKS—CURRENT ACCOUNT AND SAVINGS BANK.

Question 494.—(1) Is there any legal reason whereby a savings bank pass-book is different from an ordinary current account pass-book?

(2) If not, why is there generally an impression that the pass-book must always be brought to the bank when money is withdrawn?

(3) Can the bank decline to pay if the pass-book is not produced?

(4) Are the rules laid down by the bank in the pass-book binding upon the customer?

Answer.—(1) The difference is purely a matter of convenience.

(2) It is no doubt regarded as more important because it must be produced when money is drawn, and because it serves as a receipt for special deposits often left untouched for a long period.

(3-4) The conditions in the pass-book are binding on the customer, and the bank is entitled to demand the production of the pass-book as a condition of payment. Of course if it were destroyed the same results would follow as in other similar cases; the bank could not withhold payment on proof of loss. On the other hand it incurs no risk if payment is made without production of the pass-book to the true owner of the money.

PASS-BOOKS BY MAIL.

Question 495.—Could we not get legislation under which pass-books, with or without vouchers, could be sent by book-post instead of letter-post?

Answer.—Such a classification would be practicable if the Postmaster-General chose to take the necessary steps, but we should suppose that the objections to sending pass-books and vouchers in such a way that they could be examined by the clerks in the post office, through whose hands they pass, would make it inexpedient to adopt the practice even if it were permitted.

LETTERS PROBATE—DUTY OF BANK IN CONNECTION THEREWITH.

Question 496.—Section 97 of the Bank Act protects a bank which pays over a deposit not exceeding $500 in pursuance of and in conformity to letters of administration or probate granted by certain courts. Has a bank the right to demand the lodgment of authenticated copies of the letters probate before payment? If so, is the case different where the deposit exceeds $500?

Answer.—The section referred to does not give the executor or administrator appointed by a foreign court the right to demand payment; it merely justifies and protects the bank in making the payment if it should be willing to do so. Under the circumstances, it is of course free to name any reasonable conditions, but apart from this it is clear from the terms of the section that the bank is not protected unless authenticated copies of the documents are lodged with it.

When the deposit exceeds $500, the section does not apply, and the ordinary rules of law prevail. The person seeking payment must produce letters of administration or probate or other sufficient authority, *granted in the Province where the payment is to be made,* and in this case the bank is not entitled as of right to retain the evidence produced.

DEPOSIT IN NAME OF DECEASED MINOR.

Question 497.—A minor (resident in Ontario) dies leaving a balance in savings bank. Can the father of such minor draw the money? What is the legal course to pursue?

Answer.—Money at credit of a deceased depositor who was a minor at the time of his death, can only be legally drawn by his administrators duly appointed. There may be cases where it would be reasonable to pay the amount to the parents, but such payments could only be made at the bank's risk. Under the present procedure in the Surrogate Court letters of administration for an estate of trifling amount can be obtained at a nominal charge, we believe $2.

DEPOSIT IN NAME OF "A B, SHERIFF," OR "A B, ASSIGNEE" —DEATH OF DEPOSITOR—TO WHOM ARE THE MONEYS IN THE ACCOUNTS PAYABLE?

Question 498.—A deposit account is opened in the name of " A B, sheriff," and another in the name of " A B, assignee." On A. B's decease to whom are the moneys in the accounts payable?

Answer.—Moneys standing at the credit of "A B, sheriff," or " A B, assignee," can only be paid out on the cheques of his executors or administrators, unless there be some local statute otherwise providing.

MONEYS DEPOSITED IN TRUST—RIGHT OF BENEFICIAL OWNER TO CONTROL.

Question 499.—An account is opened in the following name, "John Smith, in trust for Springtime Fire Brigade."

In accordance with the rules of the fire brigade, all cheques have to be countersigned by W. Brown, chief. Smith draws a cheque to his own order for the balance of the account without Brown's countersignature. Is the bank justified in refusing this cheque until countersigned? What is its position if it should pay it without Brown's signature?

Answer.—It is not apparent from the statement in what way or for what purpose the by-laws have been communicated to the bank, but it would seem clear that the facts justify the bank in refusing to pay without Brown's signature.

The bank's position if it pays the cheque without Brown's signature would depend on the circumstances. If it could be shown that the deposit was made and held upon the special contract that cheques upon it should bear Brown's signature as well as Smith's, we think it would be difficult for the bank to escape liability for practically joining Smith in a breach of trust. It seems needless to say that it is unwise to take a deposit without having it made quite plain on whose order it is to be repaid.

ESTATE OF AN INTESTATE—POWERS AND RESPONSIBILITIES OF THE ADMINISTRATORS.

Question 500.—John Smith, a business man, with a bank account, dies intestate. A relative is appointed administrator by the court in the usual way. He opens an account with the bank, headed "Estate of John Smith, Henry Smith, Administrator." Is Henry Smith authorized to carry on the business temporarily, buy new goods, etc., or must he wind up at once? If the former, how long can he carry it on? Has the bank any responsibility in handling such an account?

Answer.—It is the administrator's duty in such a case to liquidate the estate. He cannot safely buy new goods even to carry on the business temporarily. If he bought on credit new goods even to complete and prepare for market goods belonging to the estate, he would become personally responsible to the seller for the price, and if the venture proved a loss to the estate he might have difficulty in freeing himself from personal responsibility for the loss.

We do not think that a bank assumes any responsibility merely by receiving money from the administrator and paying it out again on his order, even if the latter is exceeding his powers.

DEATH OF DEPOSITOR—MONEYS TO HER CREDIT CLAIMED BY CHURCH SOCIETY—DUTY OF BANK.

Question 501.—A married woman who has some money at her credit believed to be held by her for a church society, dies, leaving a husband and minor children. The society claims the money. What should the bank do? Would it be liable to the children if the money were paid to the society?

Answer.—If it is quite clear that the money was in fact held by the deceased in trust for the society, there would be no risk in paying it to the society. A bond of indemnity should be taken, and the husband's admission of the society's rights. It would be well also to have a statutory declaration from some other person who knows the facts. The children could only get at the money by procuring letters of administration of the estate. The administrator would undoubtedly have control of the deposit, but he would be bound under the conditions mentioned to pay it over to the society; so that the children would gain nothing.

DEPOSIT ACCOUNT "IN TRUST" — EXECUTOR'S RIGHT TO WITHDRAW FUNDS.

Question 502.—Where a client of a bank opens an account in his own name "in trust," and dies when the account is in funds, can his executor give a valid discharge to the bank by signing so and so "in trust" by his executor so and so?

Sub-section 2, section 96, Bank Act, does not state that a depositor's executor has this power; does it imply it?

Answer.—The fact that the testator was a trustee or that the account was in his name "in trust" does not alter the powers of the executor. It would be preferable that he should sign, not the testator's name, but his own as executor, adding the words "in trust."

DEPOSIT IN NAME OF DECEASED EXECUTOR.

Question 503.—A bank issued a deposit receipt to John Jones, executor. John Jones is now dead. The deposit receipt is not mentioned in his will. Are his executors legally entitled to withdraw the money?

Answer.—The executors of a sole trustee or surviving trustee become the trustees in his place and consequently have authority to deal with the deposit which he held in his lifetime as trustee. As the deposit receipt mentioned was not the testator's own property, it would not, of course, be mentioned in his will.

TRUST ACCOUNT—DEATH OF DEPOSITOR.

Question 504.—(a) If a party dies leaving no will and with an account in his name in trust, the trust being specified, who has the right to dispose of this money and what is the bank's responsibility?

(b) If the deceased had left a will, would the executor have full power to dispose of the money?

Answer.—(a) The proper course is to have a new trustee appointed either under the instrument, if any, creating the trust, or by the court, and the bank should not act without such appointment.

(b) Not in the Province of Quebec. In other Provinces, so far as advised, the executor would have such power, provided the instrument creating the trust made no provision for the appointment of a successor.

DEATH OF ONE OF THREE EXECUTORS—POWER OF SURVIVORS TO DRAW ON JOINT DEPOSIT.

Question 505.—An account is opened in the name of three executors. One dies leaving no will, and his heirs make an arrangement between themselves regarding his estate. Should the bank allow the remaining two executors to draw the money? No provision was made in the will for the appointment of a substitute in the event of the death of any of the executors.

Answer.—Under the ordinary rule two survivors of three depositors would be entitled to draw the money. In addition to this it will be seen from sub-sec. 2 of sec. 96 of the Bank Act that where trust money stands in the name of three persons the receipt of two is a sufficient discharge therefor. Even if the three executors were alive the bank would be authorized to pay the money to two of them, although as a practice this is open to objection.

If out of the three executors one should die, the estate is vested in the remaining two. If a second dies it becomes vested in the survivor, and although he has power, and it may be his duty to appoint another trustee, still until this is actually done he has full control of the trust estate. Should he die the control passes to his executors, then to the surviving executors, or executor, then to the executors of the last surviving executor, and so on.

PARTNERSHIP ACCOUNTS—DEATH OF ONE OF THE MEMBERS OF THE FIRM—RIGHT OF SURVIVING PARTNER TO WITHDRAW MONEYS ON DEPOSIT.

Question 506.—One partner in a firm having a current account with a bank dies. Is the surviving partner entitled to draw the balance? If he should continue to make deposits in the name of the firm, can he withdraw the funds? Would his rights be affected by the appointment of an executor or administrator of the deceased partner?

Answer.—The surviving partner has a right to withdraw the money on deposit at the time of the other partner's death.

If the surviving partner deposits money in the name of the firm we think he is entitled to withdraw the same and to sign the firm's name for the purpose. His rights would not be affected by grant of letters of probate or administration in connection with the estate of the deceased partner.

NOTE.—In the Province of Quebec a partnership is dissolved by the death of one of the partners (C. C. Art. 1892), and the mandate and powers of the surviving partners to act for the partnership cease, except for such acts as are a necessary consequence of business already begun (C. C. Art. 1897).

The legal representatives of the deceased partner may at once demand of the surviving partner or partners an account and partition of the property of the partnership (C. C. Art. 1898).

SUCCESSION DUTIES IN QUEBEC—BANK DEPOSIT.

Question 507.—A person dies, having a deposit with a bank in the Province of Quebec exceeding three thousand dollars. Can the executor or administrator transfer the amount before succession duties are paid?

If succession duties were not paid, would the bank be liable for such duties?

Answer.—We are advised in this matter as follows:

(1) An executor cannot give a valid title before succession duties are paid.

(2) The bank would not be liable for such duties, but until succession duties are paid any transfer of the deposit would be invalid.

RIGHT OF A BANK TO PAY AT A BRANCH IN NOVA SCOTIA A DEPOSIT RECEIVED AT A BRANCH IN NEW BRUNSWICK, UNDER LETTERS PROBATE ISSUED TO THE EXECUTOR IN NOVA SCOTIA.

Question 508.—A resident of New Brunswick, having a deposit in a bank in that province, moves temporarily to Nova Scotia (where he also owns personal property), and dies there. His executor obtains letters probate in Nova Scotia, and applies for payment of the deposit in New Brunswick without proving the will in that province. The deposit exceeds $500.

(1) Would the bank be justified in making payment, and

(2) Would it have any protection under section 97 of the Bank Act?

Answer.—(1) Ancillary probate of the will must be obtained in New Brunswick, and the laws of that province as to payment of succession duty must be complied with, before the bank would be justified in transferring the account to Nova Scotia. See *The King* v. *Lovitt* (1912) A. C. 212.

(2) The case does not come under section 97, seeing that the deposit is over $500.

LETTERS OF ADMINISTRATION TAKEN OUT IN TWO COUNTRIES—CONFLICTING CLAIMS FOR AMOUNT DUE TO THE ESTATE—DUTY OF BANK.

Question 509.—A draft, in duplicate, is purchased from a bank in Canada, by John Smith, payable to himself and drawn upon its own branch in a United States city. Payee is murdered in United States territory, and leaves no will; on his person is found the original, not endorsed, which is subsequently presented at the branch on which it is drawn, endorsed by an administrator, duly appointed by a United States judge. Meanwhile letters of administration have been granted by a Canadian judge to deceased's brother, his heir and next of kin, who holds the duplicate. At his request the issuing branch stop payment by telegraph, and on presentation of the original it was refused.

The case stands thus:—The United States administrator has the original, the Canadian the duplicate; the bank the money. Suits are threatened against the bank at both its United States and Canadian branches by the respective administrators. Is the money, represented by the original and duplicate draft, subject to United States or Canadian jurisdiction? What would be the bank's best action to prevent the courts of both countries from giving judgment against it, thereby causing the amount to be paid twice over?

Answer.—Pay the money into a Canadian court.

LIABILITIES OF PARTNERS—GUARANTEE BONDS.

Question 510.—A gives a bank a guarantee securing advances made to C. A afterwards enters into co-partnership with C under the style of C & Co. How does this affect the guarantee? Is A held for all advances to C previous to the partnership, and equally liable afterwards as a partner with C for the indebtedness of C & Co.? Is his connection as C's partner as equally binding for C & Co.'s debts as his guarantee would be? Does his guarantee carry some additional security after he becomes a partner?

Answer.—The formation of the partnership does not affect the guarantee. A continues to be liable as guarantor for C's indebtedness, and becomes liable as one of the principal debtors for the obligations of C & Co. He might also become liable on the same debt as a guarantor or endorser, and the effect of this would be that in the event of an assignment by the partners of their joint and separate estates, the bank would have certain ranking rights against A's personal estate, which might give it a decided advantage over the creditors of C & Co. who had not A's separate liability. We would, therefore, certainly think it well, if he has considerable means outside of the partnership assets, to take his guarantee for the firm's debts; this is a very common precaution.

It should be remembered that the partnership estate of C. & Co. would not be liable for C's indebtedness to the bank, unless there was a novation—that is, unless they agreed with the bank to assume and pay the debt. The mere fact that there was such an understanding between themselves would not make the bank a creditor of C. & Co. for advances to C, and under some circumstances this might be an important point.

MAY A CANADIAN BANK LEND MONEY ON THE SECURITY OF SHARES IN AN AMERICAN BANK?

Question 511.—(1) Referring to sec. 76 (2) of the Bank Act, may a Canadian bank legally lend money on the security of shares in an American bank?

(2) If not, and if such security were taken for an existing overdraft, would the security be released as soon as in the

ordinary course of business the credits in the account aggregated the amount of the overdraft at the date upon which the security was taken,—notwithstanding that the debit entries during the same period were sufficient to keep the overdraft from being reduced?

Answer.—We are of opinion that sec. 76 (2) applies to the stock of a bank in the United States as well as to stock in Canadian banks, and that a bank here cannot lawfully lend money on the security of such stock. It can, of course, take security on bank stock, as on any other property, for an existing indebtedness.

(2) To what extent such security, if taken for an existing overdraft, would be affected by further transactions in the account would depend on the agreement between the parties, and would not be affected by the terms of the section of the Bank Act quoted above. Under the ordinary rules credits in an overdrawn account would be imputed to the earlier debits, so that the debt existing at any time might be wiped out by later deposits, and the later cheques would create a new debt. There is, however, nothing to prevent the bank having an agreement with the customer that moneys deposited to the credit of an overdrawn account shall not be imputed as a payment on an earlier debt, and this agreement may be express or may be implied from the course of dealing.

DOWER INTEREST IN ENCUMBERED LANDS.

Question 512.—What general rule should be adopted by a banker in estimating a customer's financial position, where the assets of such customer consist of encumbered real estate, taking into consideration the possibility of a claim for dower against such lands? To what extent would the security of a loan to such a customer be affected by his marrying subsequently to the making of the loan?

Answer.—The only general rule we can suggest is that it should be assumed that in the event of the bank wishing to come against the property, it would sell for much less than the valuation put upon it; that the encumbrances would be increased by interest, taxes, insurance premiums, etc.; and that against any surplus then remaining, there would be chargeable the dower interest, which might exhaust the whole surplus. What this may amount to in money may be estimated by taking the present value, calculated according to the usual tables, of a life annuity equal to one-third of the estimated income derivable from the full value of the property.

Upon marriage the property becomes charged with the dower interest subject only to existing mortgages.

WIFE'S CONTROL OF HER SEPARATE ESTATE.

Question 513.—A bank holds a bond securing a standing overdraft up to a certain limit. Bondsman dies, and it is suggested that the customer give a demand note in favour of his wife as collateral security to cover any overdraft present and future, and his wife to hand bank a mortgage on her property in favour of bank as security for her endorsement. Would this hold? Would it help matters if note were made by wife in favour of husband, and a mortgage given by wife to husband, and assigned by him to bank to secure note?

Answer.—Under the law in force in Ontario, a wife is entitled to enter into contracts which will bind her separate estate, and there is nothing to prevent her from endorsing her husband's note and making herself liable upon the contract of endorsement with respect to her separate estate, nor is there anything to prevent her from mortgaging her property to secure her endorsement. Therefore, if the formalities with respect to the making of the mortgage be properly observed, it could be made to the bank, and would form a security to the bank. Of course, the mortgage could only be taken to secure the amount of the existing indebtedness. It could not be held for future advances.

NOTE.—In the Province of Quebec a wife cannot bind herself either with or for her husband, otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect. C.C. art. 1301.

DECEASED DEPOSITOR—LETTERS OF ADMINISTRATION—THE BANK ACT.

Question 514.—With reference to section 97 (s.s. c.) of the Bank Act, where a deceased depositor has more than $500 at his credit, and an administrator produces properly issued letters of administration to the estate and deposits with the bank a copy thereof as provided in such sub-section, what further enquiries must the bank make to be safe in paying over the money?

Answer.—We might point out that sub-section (c) is applicable where the will has been proven or letters of administration issued in a country other than that in which the deposit has been made. In the absence of this provision an administrator claiming, for instance, under English letters of administration, has no right whatever to demand payment of a deposit made in Canada. Where the amount exceeds $500 he must take out letters of administration in the Canadian province where the debt is due. The amendment empowers a bank to make payment where the total deposited does not exceed $500 on the letters granted outside of the province.

ASSIGNMENT OF BOOK DEBTS.

Question 515.—Is an assignment of book debts to the bank, as the law now stands, valid as against other creditors?

Answer.—We know of nothing to prevent the bank acquiring security of this kind. If given in contravention of any statute respecting preference or insolvency it would of course be subject to attack under such statute.

ASSIGNMENT OF FUTURE BOOK DEBTS.

Question 516.—Would an assignment of book accounts which may be created during the year, be an effectual security, or is it necessary that the accounts should first be actually in existence and specifically assigned?

Answer.—If the assignment is properly drawn so as to cover future accounts it will pass them as they arise. It would, perhaps, be well that the assignment should state the names of the prospective debtors.

ASSIGNMENT OF BOOK DEBTS—NOTICE TO DEBTORS.

Question 517.—Would an assignment of book accounts hold good as against other creditors if the debtors were not notified by the bank of the assignment?

Answer.—We do not think the notification of the debtors affects the matter one way or the other, but in the absence of notice the debtor might get a good discharge from the creditor or his assignee, or the bank's claim might be postponed to that of a subsequent assignee of the book accounts who gives notice to the debtor.

Note.—In the Province of Quebec such an assignment would not avail against third parties until the debtors had been notified (C. C. Art. 1571). See also section 30 of the Bankruptcy Act.

SECURITY LODGED BY PROMISSOR OF A NOTE—PAYMENT OF NOTE BY AN ENDORSER—RIGHT OF LATTER TO ACQUIRE POSSESSION OF THE SECURITY AND TO TRANSFER IT.

Question 518.—The bank holds for a certain note security from the promissor, which at the time it is hypothecated is declared to be pledged for the payment of all his present and future liabilities to the bank. The note is not paid by the promissor, but is taken up by the endorser. Subsequently the endorser borrows money from the bank on the security of the note. Can the bank legally hold it and the relative security, and can it deal with the latter on the terms covered by the letter of hypothecation?

Answer.—Our opinion is that the payment of the note to the bank by the endorser gives the latter the right to receive the note and security, and that (assuming that as between the promissor and himself the note still remains unpaid), he has the right to re-transfer the note and security to the bank as security for a loan he is getting.

DISCOUNTING CUSTOMER'S OWN NOTE AND TAKING ON HYPOTHECATION OF TRADE PAPER AS COLLATERAL SECURITY.

Question 519.—In making advances to a customer who usually borrows by way of discounting trade paper, in what way, if any, is the bank's position improved by discounting the customer's own note and taking an hypothecation of the trade paper as collateral security? Granted the trade notes are drawn for not longer than three months.

Answer.—There are often good practical reasons for doing this, but the mere change of procedure does not necessarily improve the bank's position.

NON-NEGOTIABLE INSTRUMENT TAKEN AS SECURITY AND SUBSEQUENTLY DECLARED INVALID—POSITION OF HOLDING BANK.

Question 520.—When a bank takes, as security for an advance, an assignment of moneys payable under an agreement for sale of land, and, owing to misinterpretation of facts by the vendor as to the quality, etc., of the land, the purchaser, in an action, is released from the agreement, in what position is the bank placed in regard to the security?

Answer.—An assignment of moneys under an agreement for sale of lands not being a negotiable instrument, the assignee (in this case the bank) cannot take any higher, or better, position than the assignor (in this case the vendor). When the purchaser was released as regards the vendor, he was released as regards the bank.

SECURITY HELD BY A PRIVATE BANKER FOR NOTES LODGED AS COLLATERAL WITH A CHARTERED BANK—RIGHT OF BANK TO DEMAND TRANSFER.

Question 521.—A private banker advanced a farmer money, taking notes which he pledged to a chartered bank.

Later he took a deed of the farmer's land, giving a letter saying he would re-convey land on payment of a certain sum by a certain date.

The private banker claims that he is a trustee for the chartered bank, and that the bank can follow the land in his, the private banker's name.

Could the bank follow the land, or would it be only an ordinary creditor against the private banker?

If the consideration stated in the deed was the payment of certain notes, would the chartered bank be a preferred creditor?

How could the private banker be made a preferred creditor?

No mention of the notes was made in the deed.

Answer.—The security which a private banker takes for notes discounted by him for his customer, on which notes he has obtained an advance from a chartered bank, would be held by him in trust for the bank, and the transfer of the security could probably be enforced by action of law.

The assignee in insolvency of the private banker (if there were one) could not realize on the security held, and regard the money as part of the general estate.

Whether or not the particular security enquired about attached to the notes held by the chartered bank, would be altogether a question of fact. If the chartered bank held all the paper given by the farmer, whose land had been given to the private banker as security, it would seem to be clear that the land was held to secure the bank.

The custom in some banks is to require a short memorandum to be attached to each note given to the bank as security by a private banker, for which he in turn holds security from the debtor, declaring that he holds such security in trust for the bank.

SECURITY GIVEN BY THE MAKER OF A NOTE TO AN ACCOMMODATION ENDORSER AND ASSIGNED BY THE LATTER TO A BANK HOLDING THE NOTE—VALIDITY OF ASSIGNMENT.

Question 522.—A bank has discounted for A a note endorsed by B. A assigns to B a mortgage to secure him for his endorsement, which mortgage B subsequently assigns to the bank as collateral security to the note. At its maturity A requests the bank to renew it, holding the mortgage as security and releasing B. Would the bank have a valid security in the mortgage under the circumstances, and would B have any claim on or interest in the mortgage?

Answer.—B would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B and the bank. If it had been assigned to B expressly to indemnify him against his liability as endorser then the assignment would cease to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A, but in order to make the matter right the latter, whose property the mortgage is, should by proper instrument, confirm the bank's right to hold it as security.

PROPER APPLICATION OF PROCEEDS OF COLLATERAL.

Question 523.—A's note for $200 endorsed by B is discounted by a bank, and, upon dishonour, is paid by B the endorser. Before maturity of the note, A gives the bank a mortgage to secure this note, and another note of A's for $200, held by the bank. After B pays the note endorsed by him, the bank foreclose their mortgage security and realize $200.

Is the bank entitled to apply the whole of the $200 proceeds of the sale of the mortgage security in payment of the $200 note of A's dishonoured, but still held by the bank and unpaid, or is B entitled to receive one-half of the proceeds as being a surety who has paid half of the debt for which the mortgage was given by A?

Answer.—If the mortgage is given as general security to the Bank, B would have no claim on the realization. If given specifically as security for both notes, the realization requires to be divided *pro rata.*

FIRE INSURANCE POLICIES HELD AS COLLATERAL SECURITY.

Question 524.—Can insurance on the store and goods of a trader, assigned as collateral security for money advanced for the purposes of carrying on his business and meeting his liabilities, be legally recovered?

Answer.—The policy would be voided if it were assigned to a creditor who had no insurable interest in the property, even if the company assented thereto, or if it were assigned to a creditor who had an insurable interest without the company's consent. But the insured may assign any sum of money which may become payable under the policy to his creditor. This is not an assignment of the contract of insurance. Under ordinary circumstances the creditor could recover from the insurance company the amount of any loss so assigned.

LIFE POLICIES AS SECURITY.

Question 525.—A bank holds an insurance policy for $5,000 upon the life of a customer (properly assigned to it and acknowledged by the company) as security for advances. The customer fails owing the bank $3,000, and the premiums are subsequently kept paid up by the bank, otherwise the policy would be lost. The insolvent dies before his estate is finally wound up, and the assignee, who has knowledge of the bank's security, claims on behalf of the estate the $2,000 resulting from payment of the policy over and above the bank's claim. Could the bank be compelled to surrender the money to him?

Answer.—So long as the bank holds the policy as security only, and has not foreclosed the rights of the creditor or his assignee, or obtained a release of their interest in the policy by other proper means, it is bound to account for any surplus. Any premiums the bank pays to keep the policy alive, would, of course, be added to its claim on the policy.

COLLATERAL SECURITY.

Question 526.—Can a life insurance policy in a friendly socicty be transferred to a chartered bank as collateral for advances?

Answer.—The answer to this question would depend upon the form in which the policy was issued, and possibly as well on the by-laws of the society, but if there is nothing in the policy or by-laws to prevent the assignment to the bank the assignment as collateral for advances would be good.

FIRE INSURANCE POLICIES—RESPECTIVE RIGHTS OF HOLDERS OF FIRST AND SECOND MORTGAGES IN THE EVENT OF LOSS.

Question 527.—A holds first mortgage for $2,600 on town property worth, say, $10,000, of which $6,000 is site value and $4,000 is the value of the buildings. There is $2,000 in insurance on the buildings, payable, in the event of loss, to A. B bank has a second mortgage on the same property for $3,000, and holds fire insurance policies to the amount of $1,500 on the same buildings under which the loss, if any, is payable to the bank. A contends that in the event of total fire loss he would get $600 from the bank's insurance under his first mortgage, and insists on the bank's policies being re-written to fully protest his first mortgage. In the event of loss, with policies remaining as above, can A recover from the bank any part of the insurance money in its policy?

Answer.—The holder of a first mortgage is entitled to all moneys received on an insurance of the property mortgaged unless there is a special contract to the contrary. The assignment to the bank in the instance cited might, perhaps, be claimed to be in the nature of such a special contract, and A would appear to be within his rights in demanding that his claim under the first mortgage to all insurance moneys up to the amount due him should be placed beyond question. Whether, in the event of loss and the bank having been actually paid the amount of its claim under the second mortgage, A could recover any part of it from the bank is a question of law that would have to be decided upon the facts.

MORTGAGE SECURITY TAKEN BY A BANK TO SECURE A CURRENT LOAN.

Question 528.—Can a bank take a mortgage to secure a current loan?

In event of a mortgage being taken to secure a current loan, must this then be considered as past due within the meaning of the Bank Act as affecting the Government statement?

Answer.—A bank may take a mortgage to secure any existing loan, whether the same is current or overdue. If taken for a current loan it does not make the loan past due in any sense.

SECURITY TAKEN FOR CURRENT ADVANCES.

Question 529.—Can banks legally take security under section 80 of the Bank Act, to secure current liabilities (business or accommodation paper under discount, but not yet matured).

Answer.—There is no doubt of a bank's right to take security for an unmatured debt under section 80 by way of mortgage on real estate or chattels.

MORTGAGE SECURITY TAKEN BY A BANK IN PURSUANCE OF A PROMISE MADE WHEN THE MONEY WAS ADVANCED.

Question 530.—A customer presents his note to a chartered bank for discount and offers to give at once a mortgage as security. He is told that it is not necessary now, but is asked to promise to give it in a few days later if judged necessary. On his answering "yes" the note is discounted. He draws the proceeds or leaves them to his credit. Two or three days after he is asked to give the mortgage, he gives it.

Could the mortgage be successfully contested?

Answer.—We think that to discount a note on a promise that mortgage security will be given is equivalent to lending money on the security of the mortgage, and that the security would be void under the Bank Act.

MORTGAGE SECURITY TAKEN BY A BANK TO SECURE OLD AS WELL AS NEW ADVANCE.

Question 531.—A bank demands security for an existing loan, which the debtor agrees to give if a further loan is made to him. This is agreed to, and he gives a mortgage to secure the whole amount. Would such a mortgage be valid, or, if invalid as to the new portion of the loan, would it be valid to the extent of the previous advance?

Answer.—The courts would probably hold the mortgage to be valid to the extent of the original loan, but not good as to the new loan.

ADVANCES ON THE SECURITY OF SHIPS OR VESSELS.

Question 532.—Would section 80 of the Bank Act permit the taking of a mortgage on a vessel for a loan made simultaneously?

Answer.—The section referred to authorizes a bank to take a mortgage "as additional security for a debt contracted to the bank in the course of its business." The latter part of section 76 (2) (c) declares that the bank "shall not either directly or indirectly lend money on the security of any ships." It is clear that the power given in section 80 cannot be used in contravention of section 76 (2), and if the mortgage were given simultaneously with the loan it would require very special circumstances to convince the court that section

76 (2) had not been contravened. This applies only to ships, the construction of which has been completed. For moneys advanced to aid in the building of any ship or vessel a bank may take a mortgage as primary security either before, at the time of, or subsequent to, the advance, in conformity with section 85 of the Bank Act.

ADVANCES TO A LIQUIDATOR UNDER SECTION 84 (A) OF THE BANK ACT.

Question 533.—Re section 84 (*a*) Bank Act. May a bank take a mortgage security from a liquidator and make him advances, provided, of course, that the liquidator has court authority for his actions?

Answer.—From the context and wording of the section it is evidently the intention that the bank can take a mortgage security from a liquidator, but in view of the fact that such action conflicts with section 76, sub-section 2 (c) the advisability of the bank entering into such a transaction is open to question, and should not be undertaken until the intention of this section is more clearly defined by the court.

SECURITY ON STANDING TIMBER.

Question 534.—In what form should security on standing timber and timber licenses be taken under section 84 of the Bank Act.

Answer.—The procedure required by the Provincial statutes should be followed and the local laws as to registration, priority, etc., would govern. In the case of timber licenses a transfer of the usual kind recorded in the Crown timber office would be necessary. In the case of timber standing on land owned by the customer the same procedure should be followed as would be adopted if a private person were taking security on the timber.

WAREHOUSE RECEIPT FORMS.

Question 535.—Is the following form of warehouse receipt good from a bank's point of view? It differs materially from the usual bank form:

"Received in store from AB, 83 large cheese marked "'H' to be delivered to the order of AB to be endorsed "hereon.

"Blanktown, 18th August, 1899. C D & Co."

Answer.—We think this is a valid form of receipt. The points in which it differs from the form usually employed by banks, as for example in regard to a statement of the place where the goods are stored, or that they are to be held until delivery pursuant to order, are not essential.

WAREHOUSE RECEIPTS.

Question 536.—A, a resident of Ontario, sells to B a quantity of goods which B duly pays for, but asks A to keep for him until they are required. B subsequently wishes to borrow on the security of the goods, and A gives him a warehouse receipt for them. Can a bank, by lending money on the security of this warehouse receipt, acquire a good title to the property, or would there be a flaw in it owing to the fact that the sale had not been accompanied by a change of possession? No bill of sale was given.

Answer.—Under the Ontario Statutes respecting Bills of Sale and Chattel Mortgages, a sale of goods unaccompanied by delivery or change of possession would not be good as against creditors of the vendor, unless there were a registered bill of sale. The bank in the case stated would acquire the purchaser's title, that is a title subject to the above defect; good against the vendor, but not against the vendor's creditors. Of course as a basis for an advance, this might be all that the bank requires.

WAREHOUSE RECEIPTS ISSUED BY A LIMITED LIABILITY COMPANY.

Question 537.—Are warehouse receipts given by a limited liability company legal? If so, who would be responsible if the receipts contained misstatements or were issued in fraud?

Answer.—Such warehouse receipts would be legal if the powers of the company under its charter were wide enough to enable it to issue them. We could not say who would be responsible for the misstatements or fraud without knowing the circumstances. Each case would depend upon the circumstances surrounding it.

WAREHOUSE RECEIPT FOR GRAIN, ETC. PROVINCIAL LAWS LIMITING RIGHT OF PLEDGEE TO HOLD.

Question 538.—The Quebec Statutes provide that where a warehouse receipt or bill of lading for grain, etc., is held as security, such grain, etc., shall not be held in pledge for any period exceeding six months. Does this provision affect banks?

Answer.—The rights of banks in this matter are governed by the Bank Act, which no longer limits the time during which grain, etc., may be held by the bank as security. The provisions in the Provincial Acts on this point do not affect banks.

ACQUISITION OF WAREHOUSE RECEIPTS OR BILLS OF LADING.

Question 539.—Which do you think is the preferable method of acquiring title to warehouse receipts or bills of lading; a transfer by endorsement of the party to whom the goods are deliverable, or a provision in the warehouse receipt or bill of lading making the goods deliverable to the order of the bank?

Answer.—We do not think there is any difference in the effect of the two modes of acquiring title.

WAREHOUSE RECEIPTS—DESCRIPTION OF PLACE OF STORAGE.

Question 540.—Is not the description of the place where goods are stored an essential point in a warehouse receipt? The statement of Mr. Lash in his article (Vol. II., p. 71 of the Journal), would seem to indicate that the description is necessary.

Answer.—In the statement mentioned Mr. Lash has reference to security under sec. 88, which, to be valid, must comply strictly with the terms of the Act. These are, among other requirements, an assignment in the form given in Schedule C (which provides for a statement of the place where stored) or in a form "to the like effect." If a form were used which contained no reference to the place, it could scarcely be said to be "to the like effect."

A warehouse receipt, on the other hand, is defined as "Any receipt given by any person for any goods, wares or merchandise in his actual, visible and continued possession, as bailee thereof in good faith, and not as of his own property."

Nothing is said as to the place of storage, and there are only two conditions laid down; that it shall be a receipt given for goods belonging to another, and that they shall be in the actual possession of the one who gives it.

WAREHOUSE RECEIPT FOR GOODS IN BOND.

Question 541.—Can a warehouseman properly issue a warehouse receipt within the meaning of the Bank Act for goods in bond; or, in other words, are goods in bond in the "actual, visible and continued possession" of the warehouseman?

Answer.—We are of opinion that a warehouse receipt cannot be given for goods in bond, as they are in the possession of an officer representing the Crown.

The Customs' Act permits of the transfer of the property in the goods, and it would, no doubt, be practicable in some way to get security, but it cannot be by way of warehouse receipt.

Question 542.—In your reply to question 541 you say that "no doubt it would be practicable in some way to get security" for goods in bond, but that it cannot be by way of warehouse receipt. Would you indicate in what way you think this could be done?

Answer.—With reference to the above it seems clear that advances on the security of warehouse receipts for goods in bond are in a somewhat precarious position. There is, however, this to be said: That as between the warehouseman and the merchant, the warehouse receipts might be held good, and that while not under the Act a warehouse receipt which a bank could acquire under section 87, it might possibly acquire the receipt as collateral security under section 80 as for a debt already contracted; but in Ontario questions would arise not only under the Bank Act, but also under the Chattel Mortgage Act.

There is no difficulty in the matter of goods in bond, in cases where security can be taken under section 88. An assignment in accordance with Schedule "C" would be quite good whether the stuff is in bond or not, assuming it to be right in other respects.

PROMISE TO GIVE SECURITY UNDER SECTIONS 87, 88 AND 90 OF THE BANK ACT.

Question 543.—A grain dealer gives the bank a promise in writing to the following effect: "In consideration of the bank making advances to me from time to time in connection with my grain business, I hereby engage to hand the bank as security therefor, bills of lading, warehouse receipts, or pledges under sections 87, 88 and 90 of the Bank Act."

Would this agreement give the bank a preferred claim in the event of the customer's failure?

Answer.—A written promise of this kind, unless followed up by the actual delivery of the security, would have no effect in the event of the customer's failure. We also have some doubts whether a promise in this form is sufficient to support the subsequent transfer to the bank of the securities mentioned. We think something more specific, both as to the loans and as to the security, is necessary.

ACCEPTED BILL OF EXCHANGE WITH BILL OF LADING ATTACHED—GOODS NOT EQUAL TO SAMPLE.

Question 544.—A bank holds a bill of exchange accepted by the drawee, to which is attached a bill of lading for wheat to the order of the bank. Before the bill matures the drawee finds that the wheat is not up to the sample and refuses payment. Is the acceptor's obligation on the bill affected by the defect in the security?

Answer.—Unless the acceptor could raise such a case against the bank, as would entitle him to repudiate his acceptance *in toto* on the ground of fraud or misrepresentation, we think that he is liable for the full amount of the bill. Any remedy he has would be against the person responsible to him for the defect in quality of the wheat.

NOTE.—With further reference to the above question the draft in question has stamped across it "documents attached to be surrendered only on payment of draft," and written on it by the manager of the bank which holds it, the words: "Bill of lading attached, 500 bushels wheat, car No. 1,524." These additions to the draft were on it when it was presented for acceptance and the bill of lading described was attached. The acceptor claims that the words written and stamped on the draft by the bank entitle him to look to the bank for delivery of the wheat described in the bill of lading, and that the bank is in no better position to enforce payment of the draft than the drawer. Is this so, and is the bank in any way responsible?

Answer.—We think not. Even if the phrases mentioned were to be taken as representations held out by the bank to induce the drawee to accept, they would be fulfilled by the surrender on payment of the bill, of the bill of lading actually attached at the time it was accepted.

DRAFT ACCOMPANIED BY BILL OF LADING FOR PAYMENT—SURRENDER OF BILL OF LADING TO DRAWEE TO ENABLE HIM TO EXAMINE GOODS.

Question 545.— A bank holds a bill for collection, with bill of lading and certified invoice attached to be surrendered on payment only, the goods being in bond. Is the bank justified in surrendering any of the documents for the purpose of enabling the drawees to examine the goods, and what risk would it run by so doing?

Answer.—The bank would be responsible to the owners of the bill for any injury or loss caused by its action. What this might be would depend altogether on the circumstances, but the bank by acting against its instructions, clearly takes on itself gratuitously whatever responsibility there may be.

DRAFT WITH BILL OF LADING ATTACHED. SHOULD COLLECTING BANK PERMIT DRAWEE TO EXAMINE GOODS?

Question 546.—A draft is received for collection from a western bank with a bill of lading "to order" attached, instructions being "surrender bill of lading on payment." Drawee asks for permit to examine goods: can collecting bank grant it?

Answer.—We do not think the bank ought to interfere in such a point without the approval of the parties interested.

DRAFT WITH BILL OF LADING ATTACHED, CASHED BY A BANK. HAS THE ACCEPTOR ANY RECOURSE AGAINST THE BANK IF THE BILL OF LADING SHOULD PROVE TO BE FORGED, OR IF THE GOODS ARE NOT AS ORDERED?

Question 547.—A bank has cashed a draft with bill of lading attached, the goods being shipped to order of the bank. Has the drawee any recourse against the bank if the goods are not as ordered, or in the event of shipping bill being a forgery? Does the bank in any way guarantee its genuineness?

Answer.—We think the bank assumes no responsibility to the drawee in such a case. He has been instructed by the drawee to pay so much money, which he has done. Even if it be said that the instructions were conditional on the documents attached being surrendered, this would involve nothing further than that the bank should surrender the documents received from the drawer, whatever they may be. We think, however, that if the bank should negotiate the draft to another bank, it might be held responsible to the latter for the genuineness of the documents.

BILL OF LADING—ENDORSEMENT.

Question 548.—A bill of lading is made out covering goods consigned to the order of John Jones. Is it necessary for the bank to endorse it as most railway agents say that they have to have bank's endorsement before they surrender goods?

Answer.—The railway agent has no right to demand the endorsement of a bank, unless the goods covered by the bill of lading are stated to be deliverable to its order and the carriers would be liable for damages arising from the detention of the goods because such a demand was not complied with.

BILL OF LADING TO THE ORDER OF A BANK—GOODS DELIVERED BY THE CARRIER TO SOMEONE OTHER THAN THE BANK WITHOUT THE LATTER'S AUTHORITY.

Question 549.—A bank cashes a draft accompanied by a bill of lading drawn to the order of the bank. If the carrier should deliver the goods to someone other than the bank, can he be held accountable by the bank?

Answer.—Assuming that by a bill of lading drawn to the order of the bank is meant a bill of lading in which the bank is named as consignee, the carrier could be held accountable. R. S. C. chap. 118 (Bills of Lading Act), enacts as follows:

"Every consignee of goods named in a bill of lading and "every endorsee of a bill of lading to whom the property in

" the goods therein mentioned passes upon or by reason of " such consignment or endorsement, shall have transferred to " and vested in him all rights of action, and be subject to " the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made to " himself."

RECEIPTS OF RAILWAYS—THEIR VALUE.

Question 550.—City miller bought wheat from village grain merchant f.o.b. at village. Bill of lading and draft attached sent to city bank. Buyer states wheat unloaded 50 bushels short. Where, under these circumstances, is quantity to be ascertained, at village or city? What effect does the attaching bill of lading to draft and sending to bank have on the proposition, freight and bank commission being paid by the buyer?

Answer.—If the shipper proves that he delivered the full quantity to the railway company, his responsibility ceases. The receipt of the railway company would not bind provided they proved that they delivered all they received.

BILL OF LADING OBTAINED FROM A CARRIER BY FRAUD AND HELD BY A THIRD PARTY AS SECURITY FOR AN ADVANCE.

Question 551.—Where a bill of lading issued by a public carrier to the order of a shipper, signed by the usual officer, is obtained by fraud, can the carrier defend the claim of an innocent holder who has made an advance against the same by contending that their clerk exceeded his authority in giving a receipt for goods that do not exist?

Answer.—Under the circumstances stated in the question, the carrier would have a good defence to an action by the innocent holder of a bill of lading. The case of *Erb* v. *Great Western Railway Company,* reported in 5 Supreme Court Reports, page 149, is directly in point. The court (two judges dissenting), held that a railway agent giving a fraudulent bill of lading for goods not received by him was acting outside the scope of his employment, and that his action therefore did not bind the company.

For the present the point must be taken to be definitely settled by authority, although the views of the judges who decided the above case have been the subject of much adverse criticism among lawyers.

Since the above case was decided the House of Lords has held that even where there is no fraud, and only a mistake on the part of the master of a ship in signing a bill of lading for a stated quantity of goods, the owner, in the event of shortage, can relieve himself of his liability to the extent of the value of the goods which he is able to show were never delivered to the master. *Smith* v. *Bedouin Steamship Company,* 1896, Appeal Cases, 70.

BILLS OF LADING.

Question 552.—If a client ships on a local railway bill 500 barrels of flour with the bill of lading reading " to the order of John Smith & Co., Demerara, S.A., notify John Smith & Co., New York," could Smith & Co. turn over the 500 barrels to a steamship company for furtherance to destination without taking up the local railway bill?

Answer.—We do not think that John Smith & Co. of New York could exercise any control over this shipment, but the railway company would, we think, without requiring the surrender of the railway receipts, be justified in delivering the goods to a steamship company, to be forwarded to their destination in accordance with the understanding on which they have received them. No doubt they would be the readier to act if pressed to do so by the New York house.

BILLS OF LADING AS SECURITY.

Question 553.—A bank receives from the shipper of goods a bill of lading (railway receipt) issued by a railway company for goods deliverable to a third party, as security for a draft drawn on the party to whom the goods are shipped. In the event of dishonour can the bank because it holds the receipt, get possession of the goods without the consignee's authority, or can the shipper get the goods without the surrender of the railway receipt by the bank?

Answer.—The duty of the railway company would be to deliver the goods to the person to whom they have been shipped, and they would ordinarily, we believe, deliver them without production of the receipt. If he refuses them, they would, no doubt, be justified in delivering them to the shipper. The possession of a receipt or a bill of lading in this form would not, we think, give the bank any rights as against the railway company to get back the goods.

INCORPORATED COMPANY—POWER TO BORROW ON SECURITY OF GOODS UNDER SECTION 88 OF THE BANK ACT.

Question 554.—Can a company having a Dominion charter borrow on the security of goods under section 88 of the Bank Act without limitation as to the amount?

Answer.—If the company is incorporated under the Companies' Act, and gives its own promissory notes with security under section 88, there would seem to be no limit to the amount which it may borrow. See the Companies' Act, section 69, sub.-sec. 2. It it should borrow in any other way, as for instance by overdraft, the limitation in the Act would apply.

If the company has a special charter, its power to borrow would depend on its own charter, or the general law if no special provisions as to borrowing were contained in the charter.

SECURITY UNDER SECTION 88 OF THE BANK ACT—DEALER IN AUTOMOBILES.

Question 555.—A dealer in automobiles wished to purchase six motor trucks and made application to a bank to advance him the money to pay for them. Is it allowable for the bank to take a security receipt under section 88 of the Bank Act?

Answer.—No.

SECURITY UNDER SECTION 88 OF THE BANK ACT—WHOLESALE MANUFACTURER AND WHOLESALE AND RETAIL DEALER IN CIGARS.

Question 556.—(1) Can a bank make advances to a wholesale dealer in tobacco and cigars, who is also a manufacturer of cigars, under section 88 of the Bank Act?

(2) How could you answer the above question if the party was, besides being a wholesale dealer and manufacturer, a retailer of tobacco and cigars?

Answer.—(1) If he is a "wholesale manufacturer" of cigars a bank can under the third clause of section 88 make him advances on the security of the cigars manufactured by him, or of the goods, etc., which he has procured for the purpose of manufacturing cigars. If he is a "wholesale dealer" in tobacco in its unmanufactured state he would be a dealer in products of agriculture under sub-section 1, and could give security on such products.

(2) The fact that he is a retailer as well as a manufacturer and wholesale dealer would not affect the question, but he could not give security on the stock bought for his retail business.

SECURITY UNDER SECTION 88 OF THE BANK ACT—MARRIED WOMAN RESIDENT IN ONTARIO.

Question 557.—Can a married woman resident in Ontario give security under section 88 and issue warehouse receipts?

Answer.—A married woman resident in Ontario may give security under section 88 or warehouse receipts, under the same circumstances in which a man could give them.

SECURITY UNDER SECTION 88 OF THE BANK ACT—GOODS STORED IN RENTED WAREHOUSE.

Question 558.—Can a man give security under section 88, or warehouse receipts for goods stored in a warehouse which he has rented?

Answer.—A man can give valid security under section 88 if he is qualified under the terms of the Act to give such security upon goods he owns, wherever they may be stored, whether in his own warehouse, a rented warehouse, or in any place whatever.

SECTION 88, BANK ACT — MEANING OF "WHOLESALE" DEALER.

Question 559.—Section 88 of the Bank Act allows banks to take security from wholesale manufacturers, wholesale purchasers, shippers and dealers. Does this section admit of taking security under it from those who are known as "middlemen?"

Answer.—Many middlemen would be classed as wholesale dealers, and as such would come within the terms of section 88, if the business engaged in were one to which the section applies. The question could not, however, be definitely answered without fuller information.

WAREHOUSE RECEIPTS ETC., SIGNED BY ATTORNEY.

Question 560.—(1) Do banks take warehouse receipts or assignments under section 88 of the Bank Act, signed by attorney?

(2) If the goods were made away with, could the principal be prosecuted criminally?

Answer.—(1) We think it is the practice of banks to take warehouse receipts or securities under section 88 given by the customer's attorney, and that such practice is proper and necessary.

(2) The customer would be liable criminally for doing away with the goods, unless he was unaware of the fact that his attorney had given security to the bank. The attorney would also be liable criminally if he personally should dispose of the goods improperly.

SECTION 88 OF THE BANK ACT—CLASSES OF PERSONS FROM WHOM SECURITY MAY BE TAKEN, AND FORM OF SECURITY.

Question 561.—(1) Section 88 of the Bank Act appears to deal only with wholesale manufacturers, wholesale purchasers, dealers or shippers, and with farmers. Can a bank take from others security of the same kind and upon similar terms as if a private person were making the advance? (2) Can a bank take security of a different kind than that mentioned in section 90 from the class dealt with by section 88, *i.e.*, wholesalers, etc.? (3) Can a bank take security in the form prescribed in section 87 from persons who are not wholesalers or shippers? (4) Can a bank take security for future advances from wholesalers, etc., in the form of a chattel mortgage? (5) Need a bank register chattel mortgages for protection against other creditors?

Answer.—(1) A bank cannot take security such as that described in section 88, and amendments, except from persons that came within the description contained in the first, second and third clauses.

(2) (3) A bank can take security under section 87 or section 80 from any debtor, whether he cames under the descriptions in section 88 or not.

(4) A bank cannot take security from wholesalers by way of chattel mortgage for future advances, except possibly as suggested below.

(5) A bank's rights under chattel mortgage are precisely the same as the rights of other parties, and they must register securities if they are to be good against other creditors.

It is probable that the security taken under section 88 might be in the form of chattel mortgage. On this point we think the view expressed in *La Banque d'Hochelaga* v. *Merchants Bank of Canada* case, referred to on page 382, Volume II. of the Journal, is sound:

"I agree with the contentions of the plaintiff's counsel that in lending money to the classes of persons and upon the security of the goods mentioned in section 88, the bank is not limited to taking security in the form set out in the schedule, but may take it in any manner known to the law. The section is directed chiefly to transactions of a certain nature. It occurs among a number of provisions defining the powers of banks and the nature of the business which they may transact. There was in the more general section (76) a qualified prohibition against lending upon such security, and section 88 empowers the bank to lend to certain persons upon certain security otherwise prohibited by section 76. The clause as to the form is permissive only, and was probably designed for the convenience of banks, that they might draw up such securities for themselves without a solicitor's assistance, and feel that a long mortgage was unnecessary. That clause cannot, I think, control the general enabling powers contained in the earlier portions of the section. It is true that I interpret section 76 as meaning that, except as authorized by the Act, a bank shall not lend on certain security. But this has to do with the substance and not with the form of transactions, and if no form were authorized it could not be said that the earlier part of section 88 would be inoperative."

It should, however, be said that expressions made use of elsewhere, where the point was not directly involved, indicate that there may be a difference of opinion in the courts respecting this matter.

SECTION 88 OF THE BANK ACT—GOODS IN WAREHOUSE, ETC.

Question 562.—A firm of commission merchants have as part of their business a large warehouse, part of which they use as a bonded warehouse. They sell on commission as agents for various manufacturers and producers in the United States and in Europe, meats, salts, agricultural implements, sugar, and various other lines of merchandise. Their capital is largely invested in their warehouse, and they are, therefore, sometimes obliged to borrow to settle customs duties on goods ordered for local clients, or to enable them to carry consignments. They wish to protect the bank making the advances and purpose doing it by assigning to the bank certain goods, their own property, purchased on their own account and sold by them from time to time to the trade. In what form can the proposed assignment be made, and in what shape can the bank legally accept it? Can the firm give a security receipt seeing the goods assigned are in their own warehouse?

Answer.—Such security would have to be taken under section 88 of the Bank Act, and we do not think any of the above commodities come under its provisions.

SECURITY UNDER SECTION 88 OF THE BANK ACT—ASSIGNMENT MUST BE TAKEN FROM THE OWNER OF THE GOODS.

Question 563.—A bank agrees to make an advance to Brown Bros. on the security of hogs. The hogs are the property of the firm, but are in possession of Robert Brown, one of the partners. Should the assignment under section 88 of the Bank Act be taken from Robert Brown or from the firm?

Answer.—The assignment must be taken from the owner of the goods, in this instance from the firm of Brown Bros. It is not necessary that the goods should be in the owner's possession in order to validate the assignment, but the name of the person in whose possession they are should be mentioned, as also the place or places where the hogs are kept.

SECURITY UNDER SECTION 88, BANK ACT, ON "ALL" THE GOODS IN A PARTICULAR PLACE.

Question 564.—The security under section 88 which we have taken from our customer reads:

"All the lumber in our yard situated on Victoria Street, and also that in our yard on Peter Street."

There is a very great deal more lumber than is necessary to cover the advance. Would such security be good against other creditors? Is it not defective inasmuch as it does not mention any quantity, and could not the debtor sell practically all the lumber in each yard and still be within the law?

Answer.—We do not think the description is defective. (See Mr. Lash's article on "Warehouse Receipts, Bills of Lading and Securities under section 74 (now section 88) of the Bank Act," page 54. Vol. 11 of the Journal. This security would be good against creditors if otherwise properly taken. The fact that there is a great deal more lumber than is necessary to cover the advance does not affect this question. The absence of a reference to the quantity does not enable the debtor to sell any part of the lumber assigned. The effect of the assignment is to vest in the bank the ownership of the lumber as it was at the time the assignment was given, and the customer would have no right to remove any lumber thereafter without the bank's consent.

SECURITY UNDER SECTION 88 OF THE BANK ACT—AUTOMOBILES—POWER OF AGENT.

Question 565.—1. Can a bank hold automobiles under security receipt, or must an independent warehouse receipt be taken? Would it be necessary to take the numbers on the machines? Suppose the maker had a lien note?

2. Can an agent selling automobiles give a valid security receipt to the bank?

Answer.—1. For the purpose of this answer it is assumed that by "security receipt" is meant security under section 88 of the Bank Act in Form Schedule C. A bank could under section 88 loan on such security to any wholesale manufacturer of automobiles and to others upon independent warehouse receipts under section 86. In describing the security such a description should be given as to identify the automobiles with reasonable certainty. The numbers would not be essential, but would assist in identification. It is only the wholesale manufacturer of goods, wares and merchandise who can borrow upon such goods under section 88.

2. A mere agent could not give a valid security to a bank, unless he is authorized by the owner to do so.

SECURITY UNDER SECTION 88 OF THE BANK ACT—MAPLE SUGAR—FINE FINISHED LEATHER.

Question 566.—Does the fact that security on pig-iron given by an importer (not a manufacturer) in form of a security receipt (not a warehouse receipt) is invalid, mean that advances under security receipt to wholesale importers (not manufacturers) must be made against foods in their raw state, *i.e.,* those that have not gone through any process of manufacture? Would an advance against a security receipt (not a W. R.) to an importer (not a manufacturer) of maple sugar be valid? Also an advance against security receipt (not a W. R.) of fine finished leather?

Answer.—Not necessarily against goods in their raw state, but the goods must fall in the category given in sub-section 1 of section 88 of the Bank Act which is interpreted in sub-section (l) of section 2.

We think the answer would be "no" in both cases. Maple sugar would probably be held not to be a product of the forest or agriculture, but rather of a process of manufacture, and it is not specifically included in the articles named in the interpretative clauses above referred to. Fine finished leather is clearly a manufactured product which could not be claimed to be covered by the terms of the clause above referred to or that preceding it.

SECURITY UNDER SECTION 88 OF THE BANK ACT—GROCERIES —FUEL FOR MANUFACTURING PURPOSES.

Question 567.—Can section 88 of the Bank Act give a bank taking security under it, a lien on all materials on the pledgor's premises; for instance, a manufacturer of clothing? Can the security cover in addition to clothes, linings, buttons and other articles which *actually* go into the manufactured product, other articles such as wood, coal and fuel-oil used in furnaces for making steam to run the machinery of the plant, and can it include groceries, boots and shoes, dry goods, etc., in a pledgor's store, such store being run for the sole benefit of the workmen?

Answer.—Security under section 88 certainly covers all articles which actually go into the manufactured product. The position as to fuel has not yet come before the courts, but it is doubtful, and such security should not be relied upon. Groceries, etc., in a store run for the workmen, would probably be altogether outside the scope of the Act.

SECURITY UNDER SECTION 88 OF THE BANK ACT—GOODS IN PROCESS OF MANUFACTURE.

Question 568.—A bank advances money to buy hides, taking security on the same under section 88; the bank and the customer agree that the latter may manufacture them into gloves without prejudice to the bank's security. Will the bank's security cover the gloves while in process of manufacture or after completion, or would it be necessary to take a chattel mortgage to protect the bank?

Answer.—We think that under section 89 of the Bank Act an assignment or security under section 88 would continue to cover the goods described in it during the process of manufacture, and would hold the manufactured goods after the completion of the same.

A chattel mortgage would not improve the matter unless there were some irregularity in the security under section 88, the assignment under section 88 could only in the case mentioned be attacked on the score of its validity under the Act, and in a simple case such as you put that risk should amount to nothing.

SECURITY UNDER SECTION 88 OF THE BANK ACT—LOGS.

Question 569.—A bank has made advances for which it holds security, under section 88, on logs on the banks of a certain river within a defined timber limit. The logs have to be removed in the spring. Should the bank at the time of making the loan take a written promise to give security on the logs when they have been moved down the river, or will it be sufficient to have an endorsement on the original security to the effect that the logs therein described are now in a certain boom and held to the order of the bank?

Answer.—The bank's rights to hold the logs as security is not affected by their removal, and no other or further security is necessary. A statement to the effect that the logs are now stored in a certain boom might be useful as evidence, but other credible evidence would serve as well. We do not think that any statement of the kind should be endorsed on the security itself; the less that is interfered with the better. It should be borne in mind that the original description must be of such a nature as to enable the bank to identify the logs, even although their location should be changed, and if any change takes place in the location of the logs the bank should be put in possession of evidence of the change.

SECURITY UNDER SECTION 88 OF THE BANK ACT—ADVANCES ON TIMBER—PRIOR CLAIM OF PURCHASER WHO HAS GIVEN NOTICE OF OWNERSHIP.

Question 570.—A, who is operating a sawmill, sold a million feet of lumber to be cut and delivered as cut at the railway siding near the mill. The purchaser resides at a distance. Under the contract fifty per cent. of the purchase price per thousand feet is to be paid as the lumber is sawn; forty per cent. at the siding; and the balance thirty days after shipment. A copy of the contract is filed with the bank by A. The bank lends on the lumber, taking security in the form of Schedule C, when about half the lumber is at the siding. At this point A absconds. Who has a prior claim to the lumber —the bank or the purchaser?

Answer.—The bank having received notice of the contract, the purchaser would have a prior claim to the extent to which he had performed, or was prepared to perform, his part of it.

SECURITY UNDER SECTION 88 OF THE BANK ACT—ASSIGNMENT OF GOODS "AS PER SCHEDULE ATTACHED."

Question 571.—Is it proper for an assignment under section 88 of the Bank Act to be signed by the customer in blank? If so, is it sufficient to hold a stock list, revised and submitted by the customer once a month, to be appended to any assignment desired as a means of identifying the goods pledged? (The assignment reads "as per Schedule attached.")

Answer.—The course suggested is dangerous and highly undesirable. Sections 88 to 90 of the Bank Act being legislation of a special character, and liable to a strict interpretation by the courts, the terms thereof should be followed as closely as possible. The security in Form Schedule C, or to the like effect, should be taken and completed at the time the advance is made, or a written promise or agreement under section 90 obtained, and the security in Form Schedule C completed as soon as the goods are ascertained.

SECTION 88, BANK ACT—ADVANCES ON ASSIGNMENTS AND WAREHOUSE RECEIPTS CLEARED OFF FROM PROCEEDS OF BILLS OF EXCHANGE NEGOTIATED BY THE BANK, AND REPRESENTING A SALE OF THE GOODS HELD AS SECURITY.

Question 572.—A customer, who is a produce dealer and warehouseman, has advances secured by assignments under section 88, and by warehouse receipts given by other warehousemen. He sells us certain bills of exchange on English houses, these being secured by warehouse receipts (his own and others) which are to be retained here by us until the goods are ordered forwarded by drawees. Out of the proceeds or purchase price of the bills he pays off his advances.

When the goods are ordered forwarded by the drawees we are to exchange the warehouse receipts for the bills of lading and send them on to be surrendered on payment of the drafts. We hold a written promise from our customer that he will give security under section 88, or by transferring to us warehouse receipts or bills of lading for any advances we make him.

(1) Seeing that new money for the bills of exchange does not pass from us to him, except by way of credit on a previous indebtedness, are the warehouse receipts attached thereto validly acquired, apart from the written promise?

(2) Is the party's own warehouse receipt a valid security, and if not, are we under any obligation to the drawees in respect thereto?

(3) Would the bills of lading received in exchange for the warehouse receipts be validly acquired?

Answer.—(1) The question assumes that the bills were sold to the bank. If so, the rights of the bank are limited to its rights as holder of these bills, and of the security with them. We think there is no doubt that the securities in such case are validly acquired. The purchase of a bill of exchange drawn by a customer on another party, with documents attached, is a new transaction, notwithstanding that the proceeds of the draft are used to pay off a previous indebtedness, provided the customer is then at liberty to draw the proceeds of the new transaction.

(2) Under the Bank Act a warehouse receipt must be given by a person not the owner of the goods. The customer's own receipt, therefore, covering his own goods, would not be a valid security in the hands of the bank. The bank would not, however, be under any obligation to the drawees with respect to the security, unless it should make a statement or representation which might be held to amount to a warranty, or unless there was fraud on the part of the bank.

(3) The bills of lading received in exchange for the valid warehouse receipts would be validly acquired, but we do not think that sub-section 2 (a) of section 90 could be relied on in so far as the bill of lading is substituted for an invalid warehouse receipt. As regards the latter, the bank's rights depend on the written promise referred to. If this is sufficient to cover the acquisition of the bill of lading after the negotiation of the bill of exchange, it would, no doubt, be a valid security in the hands of the bank.

WAREHOUSE RECEIPTS GIVEN UNDER ONTARIO MERCANTILE AMENDMENT ACT.

Question 573.—A private banker acquires security on wheat in the owner's possession, by a warehouse receipt which is valid under the Ontario Mercantile Amendment Act. The private banker thereupon endorses the receipt to a chartered bank as security for an advance. Is the bank's security good, and, if not, how can it be made good?

Answer.—The bank would not, in such a case, acquire any rights in the wheat. It can only get security on goods in the owner's possession in the manner authorized by the Bank Act. If the owner in the case mentioned were a person authorized to give security under section 88, the bank could make him a direct advance, on the endorsement or guarantee of the private banker, and take direct security under section 88.

SECTION 88, BANK ACT—INAPPLICABLE TO PRIVATE BANKERS.

Question 574.—Would an assignment of merchandise to a private banking firm drawn in the form provided in Schedule C to the Bank Act, 1913, hold good as against judgment creditors of the assignor? Does the said form of security come under the Bills of Sale Act and consequently require registration when taken by other than a chartered bank?

Answer.—The provisions of the Bank Act are applicable only to chartered banks, and a private bank could not validly acquire unregistered security in the form of Schedule C of the Bank Act. In the Province of Ontario a private banker is enabled to acquire warehouse receipt security under the provisions of an Act entitled "The Mercantile Amendment Act," but we do not know of any similar legislation in other provinces.

SECURITY UNDER SECTION 88 OF THE BANK ACT—PROVINCIAL REGISTRATION.

Question 575.—In section 85 of the Bank Act a lien acquired by a bank on ships is subject to the law of the Province. No mention of the Provincial laws is made in section 88. Must security taken under this section be registered, if the Provincial laws require such registration

Answer.—No. The powers given by the Bank Act under section 88 override any provisions in the Provincial Statutes respecting the registration of liens.

WAREHOUSE RECEIPT SECURITY ACQUIRED FOR AN OVERDRAFT WITHOUT A "WRITTEN PROMISE."

Question 576.—A customer's account has been overdrawn for some days, an advance by way of overdraft having been granted without having a written promise to give security. If a note is subsequently discounted, with a warehouse receipt attached for the purpose of covering the overdraft, is the bank's title to the warehouse receipt good?

Answer.—On the bare statement of facts here submitted we would think that the warehouse receipt has not been validly acquired. It was not acquired when the loan was made, and there was no "written promise" to validate a transfer after the loan had been made.

SECURITY UNDER SECTION 88 OF THE BANK ACT—WRITTEN PROMISE TO GIVE SECURITY.

Question 577.—In the fall of the year a firm of lumbermen make application to a bank for advances to be made during the ensuing winter, to enable them to carry on lumbering operations.

The firm signs a written request, addressed to the bank, which reads, in effect, as follows:

"We request you to advance us such money as may be necessary to enable us to get out about ten million feet of lumber during the season 1900-1901; in consideration of the advances so to be made, we agree to give you security upon the logs or the timber or the product thereof, and to furnish you upon demand, with a cove receipt therefor, or other security under the Bank Act."

At the time that this request is made, no money is advanced.

During the winter, notes of the firm are discounted by the bank, and at different times during the season, as logs are drawn on to the shores of a certain lake, cove receipts and security under section 88 of the Bank Act are given.

At the time the notes are negotiated there is no delivery of the security or written promise.

The written promise is anterior to any advance. The cove receipts are not contemporaneous with the negotiation of the notes, but subsequent.

Is this method of procedure within the provisions of sections 87, 88 and 90 of the Bank Act?

Answer.—The form, although somewhat general in its terms, would, we think, be sufficient to support the after acquisition of the security mentioned in it. The logs or timber which could be taken as security would be limited to the 10,000,000 feet of lumber or thereabouts "got out" by the customers during the season of 1900-1901, and the debt for which the security might be taken would be limited to advances made within the terms of the promise.

SECTION 88 OF THE BANK ACT—EFFECT OF PROMISE TO GIVE SECURITY ON THRESHED GRAIN.

Question 578.—May a bank take a "promise to give security" on threshed grain, from a farmer to secure an advance under section 88, if the grain is still uncut and in the field? Would it be valid provided advance and promise are made on same date?

Answer.—Yes, and security upon threshed grain afterwards taken in accordance with the promise would be valid, but the bank would acquire no claim upon the growing crop;

and would have no priority over other creditors in respect of the grain until it was actually cut and threshed, and the promise had been implemented by the actual giving of security.

NOTE.—For moneys advanced for the purchase of seed grain the bank may acquire a first and preferential claim upon the growing crop as well as the threshed grain, under sub-section 10 of section 88.

SECURITY UNDER SECTION 88 OF THE BANK ACT—ADVANCES ON LIVE STOCK.

Question 579.—Under the laws of Saskatchewan farmers have exemption from execution—four horses, four cattle, etc. Can a farmer for the purpose of securing advances waive exemptions on his horses and give security upon them? If so, must the security be by way of chattel mortgage in accordance with the law of the Province of Saskatchewan?

Answer.—(a) Yes, while giving the security may be legal, it might not be possible to enforce it if the farmer chooses to claim his exemptions, and it should, therefore, not be relied upon. (b) Yes.

SECTION 90 OF THE BANK ACT—ADVANCES MADE IN THE MORNING NOT COVERED BY SECURITY UNTIL THE AFTERNOON.

Question 580.—Are the requirements of section 90 of the Bank Act fulfilled by the taking of securities under section 86 of the Act, in the following manner and without any promise on the part of the client to give security. The advances to a grain commission merchant are made in the morning in the way of an overdraft, which is covered the same day at three o'clock by the discounting of drafts to which are attached bills of lading and warehouse receipts to the order of the bank. Would anyone be justified in arguing that in practice the advances and the taking of securities as stated above are made contemporaneously?

Answer.—It could, no doubt, be argued that the making of advances in the morning and the taking of security in the afternoon is a substantial compliance with the terms of the Bank Act, but, since the point is not free from doubt, why take any chances, when by complying with the terms of the Bank Act, no risk whatever would be taken, that is, require from the borrower either before or at the time the advance is made a written agreement or undertaking to furnish the security in question.

INSURANCE CERTIFICATES ACCOMPANYING BILLS OF LADING—FORM.

Question 581.—A certificate of insurance is attached to a bill of lading. Must this certificate be drawn in favour of the drawer of the relative bill of exchange, or may it be in favour of the bank negotiating the draft? Is either form of procedure legal?

Answer.—We do not think it is material to whom a marine certificate of insurance is issued. The loss under these certificates is usually made payable to a specified person or to his order, and if in case of loss the party holding the bill of lading holds a certificate of insurance which is originally, or by endorsement, made payable to himself, he is entitled to collect the insurance.

INSURANCE POLICY ON GOODS ASSIGNED UNDER SECTION 88—WRITTEN CONSENT OF INSURANCE COMPANY TO TRANSFER OF PROPERTY NOT ESSENTIAL.

Question 582.—Under one of the clauses found in policies issued by fire insurance companies in Canada, any transfer or assignment of the property insured, without the written consent of the company, renders the policy void. Does not this seriously affect the position of banks taking security under section 88? Schedule C is in express terms an assignment of the goods.

Answer.—The clause referred to would not apply to assignments under section 88.

The Supreme Court held in *Peters* v. *Sovereign Fire Insurance Co.* (1886), that such an assignment of the property as would render a policy void under this condition must be an absolute assignment of all the insured's interest therein, and that the clause in question is not to be read as forbidding the mortgaging of the property, where the insured retains an insurable interest. The case of an assignment under section 88 comes very clearly within the terms of this judgment, and if this is the only condition in the policy affecting the matter, notice of security given under section 88 need not be given.

In a later case, *Salteria* v. *Citizens Ins. Co.* (1894), the condition in the policy reads as follows: "This policy shall not be assignable without the consent of the company . . .; all encumbrances effected by the insured must be notified within fifteen days thereof; in the event of any change in the title to the property insured the liability of the company shall henceforth cease." A chattel mortgage covering the goods insured was afterwards given to a creditor, and in the chattel mortgage all policies upon the goods were assigned to the mortgagee. The court held that the policies were avoided by their transfer to the chattel mortgagee without the consent of the company, and also by the execution of the chattel mortgage which was held to constitute a "change of title" to the property. It was also held that want of notice of the chattel mortgage would, in view of the condition as to encumbrances, avoid the policy.

In the latest case, *Torrop* v. *Imperial Fire Ins. Co.* (1896), the clause on which the defence was rested made the policy void "if the said property should be sold or conveyed, or the interest of the parties therein changed." The Supreme Court of Canada held that a bill of sale which had been given, although not an absolute transfer of the property, was a change of interest which avoided the policy under this condition.

With such conditions in the policy as existed in the last two cases, the giving of security under section 88 without the consent of the company, would probably avoid the policy. It is to be remembered, however, that in almost every instance the loss, if any, under such policies is by their terms made payable to the bank holding the security, and under such circumstances no question could arise.

In so far as insurance contracts in Ontario are concerned, where the statutory conditions govern, security under section 88 would not contravene any of these, but in the other provinces it would depend entirely upon the particular language of the condition.

This was a point in the last mentioned case which is of general interest. After giving the bill of sale above mentioned the owner of the goods made a general assignment for the benefit of his creditors, by the terms of the assignment transferring to his assignee, among other things, all policies of insurance. The consent of the company to this assignment of the policies was not obtained, and this seems to have been regarded by the Supreme Court of Nova Scotia as a transfer in breach of the condition, which would have avoided the policy.

INSURANCE PAYABLE TO A BANK "AS ITS INTEREST MAY APPEAR."

Question 583.—A bank holds security under section 88 on beef, pork and cured meats. The insurance policy lodged with the bank covers beef, pork, cured meats, lard and lard pails, bacon sacks, salt, and all such other articles as are used in a pork packing establishment. The loss, if any, under the policy is made payable to the bank, " as its interest appears."

A total loss by fire occurs. Can the bank retain the whole insurance? If not, what are its rights?

Answer.—We think the insurance must be apportioned to the various items which it covers, and that the bank is entitled to receive the portions covering beef, pork and cured meats only.

If the loss, if any, had been made payable to the bank absolutely, not limited to its interests in the property, the bank could, doubtless, collect and retain the insurance.

INSURANCE ON PROPERTY HELD AS SECURITY.

Question 584.—If a bank notifies a customer that it has assumed possession of goods assigned to it under section 88 of the Bank Act—although allowing the goods to remain on the customer's premises—ought it to require a transfer of the insurance into its own name, or would the policies issued in favour of the customer—loss being payable to the bank—be sufficient to protect it, in case of fire?

Answer.—The fact that the bank has taken possession of goods assigned to it under section 88 should, as a matter of precaution, be notified to the insurance company, as it might be held to be a change material to the risk under the conditions of the policy, but notwithstanding the fact that the bank takes possession its interest is still that of a mortgagee, and the customer remains the "general owner."

SECURITIES UNDER SECTION 88 OF THE BANK ACT.

Question 585.—A bank gives credit to a grain buyer, and arranges, for his convenience, to cash his grain tickets, taking a note and security under section 88 covering the grain, whenever the amount paid reaches a certain sum. Would it be best for the bank to open two accounts, one for the grain tickets paid, to be credited with the proceeds of notes when security is taken, the other for credits for proceeds of grain sold, and debits showing the application of the proceeds of the grain on the notes? Would the security in such a case be valid?

Answer.—There might be same advantage, in the way of keeping a fuller record of transactions, in having two such accounts, but we do not think that the validity of the security would be affected thereby, one way or the other. That depends on all the facts in connection with the account, and the mere division of the entries could not make any difference.

The payment of the customer's grain tickets, assuming that he has not provided money in advance for the purpose, constitutes the loan, which is afterwards to be secured by assignments under section 88. It is, therefore, essential that before paying any grain tickets the bank should hold from the customer a written promise to give security.

INSURANCE ON HYPOTHECATED GOODS.

Question 586.—A mercantile house holds a policy of insurance covering goods in their possession, " their own or held in trust or on commission for which they are responsible in case of loss." The owner of certain goods stored with them takes their warehouse receipt for these goods, for the purpose of borrowing on the same, and they assign to him this policy of insurance with the written consent of the company. If he borrows on the warehouse receipt from a bank and makes the loss, if any, under the policy payable to it, would the bank's position as to the insurance be in order?

Answer.—The transfer of the policy in the way described, if properly done, would, we think, make it a contract of insurance covering only the goods mentioned in the warehouse receipt, provided these are part of the goods which the policy originally covered, and the position of the owner and the bank would be the same as if the policy had been originally taken out by the owner, on his own goods alone. Under the wording quoted, the goods might have to be goods for the loss of which while stored with them the mercantile house would be responsible, to bring them within the policy.

While we think the case put by our correspondent is fully covered by this answer, we wish to say that in questions respecting fire insurance, very much depends upon the facts and the exact wording of the policies, endorsements, etc., and general questions may not describe these with sufficient exactness to ensure a correct reply.

USE OF TITLE "SAVINGS BANK" BY A TRUST OR LOAN COMPANY.

Question 587.—Is a trust or loan company allowed to use the words " Savings Bank " in an advertisement? If not, why not?

Answer.—No. This is a contravention of section 156 of the Bank Act, which reads as follows: "Every person using the word 'bank' or the words 'savings bank,' 'banking company,' 'banking house,' 'banking association' or 'banking institution,' or any word or words of import equivalent thereto in any foreign language, in a sign or in an advertisement, or in a title to represent or describe his business or any part of his business without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act." It is interesting to note that the words "Savings bank" were not inserted in this section until 1913. The object of this provision is to prevent persons or companies from doing business under any name which might mislead the public into the belief that it was doing business with a chartered bank.

"PAID UP CAPITAL" — "RESERVE FUND" — "DOUBLE LIABILITY."

Question 588.—Please give full explanation of the meaning of paid-up capital, and reserve. What is meant by double liability, as regards shareholders of a bank?

Answer.—By paid-up capital is meant the amount paid in by subscribers in payment of the bank's stock when it is issued. Bank stock cannot be subscribed at less than par and payment must be made in cash. If issued at a premium the par value only is counted as paid-up capital. The excess over par, if the stock is issued at a premium, can, by resolution of the directors, be set aside as a rest or reserve fund within the meaning of that expression in the Bank Act. If the bank earns a substantial amount over the dividends paid to shareholders, all expenses and bad and doubtful debts having been provided for, the directors can set aside such part of that surplus as they see fit into rest or reserve fund. The rest or reserve fund is not required by the Bank Act to be invested in any particular securities and can be intermingled with the general assets of the bank.

Section 125 of the Bank Act tells exactly what double liability is, namely, that in the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares.

STOCK TRANSFERS.

Question 589.—(1) Is it legal for a person holding shares in a bank to transfer them to his own name in trust, and *vice versa?*

(2) Can a firm transfer stock to one of the parties composing it and *vice versa?*

(3) Can an attorney transfer stock to himself?

(4) Can the same person act as attorney in making a transfer and also as attorney for the transferee in accepting the same transfer?

(5) Can a shareholder transfer stock to any person, and accept it for the latter under power of attorney?

Answer.—(1) The first is quite in order. The party can transfer to himself in trust simply, or to himself in trust for some named person or fund.

The converse case, of transferring trust shares to himself, might be legal, but the bank might be responsible to the *cestui que trust* if the transfer were wrongfully made. We think, notwithstanding the protection given by the Act as to trusts, banks cannot altogether avoid responsibility when they permit trustees to convert assets which are clearly trust property to their own use.

(2) If all the members of the firm join, a transfer to one of the partners is quite in order, but there is the same objection to one partner transferring partnership shares to himself, as there is to a trustee transferring to himself personally.

There is no objection to the converse procedure. One partner holding stock can certainly transfer it to his firm.

(3) This is no doubt legal, but it is open to the same difficulties as are involved in the transfer of trust stock to the trustee personally. The practice should not be permitted, unless the power of attorney expressly authorizes it by the

use of such a phrase as "to transfer to himself or any other person." Brokers in Toronto generally have some such phrase in their forms.

(4) There is no objection to this.

(5) This also seems to us quite proper.

The only point we think that needs to be carefully remembered in dealing with these matters is that an agent, attorney, trustee, or other person standing in a fiduciary capacity, has no right to use this power for his own benefit without the express sanction of the parties concerned, and that if a bank lends itself to any act contrary to this principle, those who suffer may be able to fix responsibility upon it.

Power of Attorney Held by Brokers Authorizing Bank Officers to Transfer Bank Stock.

Question 590.—Is the manager justified in acting on a power of attorney from a shareholder of the bank, which authorizes him to sell and transfer certain of its shares on behalf of the shareholder, and to receive the consideration money, etc., when the same is handed to him by a broker, with the request that the transfer be made to his nominee,. the proceeds of the shares not being paid to the manager on behalf of the shareholders, but left to be deposited by the broker?

Answer.—We think that a bank officer would not be justified in acting on such a power of attorney in the way mentioned. If as a matter of fact the shareholder did not get the proceeds from the broker, the officer acting as attorney would probably be responsible to him therefor, unless he could show that the broker had authority from the shareholder to receive the money.

It is not unusual for such powers of attorney to be given, but we think the banker should require in every case that they should be accompanied by a letter from the shareholder, indicating how they are to be used.

NEW STOCK ISSUED BY A BANK—ALLOTMENT TO EXECUTORS WHO ARE NOT AUTHORIZED TO INVEST MORE MONEY IN BANK STOCKS.

Question 591.—The trustees of an estate are entitled to an allotment of new stock about to be issued by a bank, at a price which would give them considerable profit, but they are debarred by the terms of the trust from investing further moneys in bank stocks. Is there anything in the Bank Act which would authorize their disposing of their rights to the new shares, or are they under any disqualification as trustees in this respect?

Answer.—Leaving out of consideration the right of the directors to make regulations respecting the transfer of shares, which would not be likely to affect the question, no special authority in the Act is necessary to enable shareholders to sell their rights to the new shares, and trustees have the same power in this respect as other shareholders, which they would, we think, be bound to exercise.

BANK STOCKS HELD "IN TRUST"—TRUSTEES AND THE DOUBLE LIABILITY.

Question 592.—A trustee accepts a transfer of stock in a bank, describing himself as a trustee but without stating for whom. In case there should be a call for the double liability would he be personally responsible

Answer.—Yes. See section 125, sub-section 2 of the Bank Act.

PENSION FUND—INVESTMENT IN BANK STOCK—DOUBLE LIABILITY.

Question 593.—Where investment is made in bank stock of a part of officers pension fund of a bank, in event of the failure of that bank, on whom would the double liability call be made in respect to such shares?

Answer.—The double liability would have to be paid out of other investments of the pension fund until exhausted.

GOVERNMENT BANK STATEMENT—DIRECTORS' LIABILITY.

Question 594.—Can you inform me why the wording in the bank returns to the government in regard to directors' liabilities was changed from

> "Aggregate amount of loans to and liabilities, direct and indirect, or directors and firms and partnerships in which they or any of them have any interest,"

to the present wording, viz.:

> "Aggregate amount of loans to directors or firms of which they are partners."

It has been suggested that the latter refers only to the direct liability of directors, or firms of which they are partners, and not to the indirect, as it is contended there is a difference between making a loan to a party or firm and discounting business paper for them.

Those who hold the other view do not consider there is any difference, and that the latter form of return requires just the same information former ones called for.

Answer.—The change in the government statement respecting directors' liabilities was adopted, we believe, on the ground that it was not reasonable to show the "indirect" liabilities of directors, and that a bank should not be exposed to criticism merely because it took the precaution of requiring a good endorsement on its loans, even if this endorsement were one of its own directors.

As to the difference between the meaning of the present phrase and that previously used, the chief difference is, that where a director (or his firm) is liable on paper which has been discounted for other parties, it is not now shown as part of the directors' liability. This, however, is quite distinct from the question raised, as to whether, under the present clause, business paper discounted for directors should be shown. No doubt the discounting of such paper is not, speaking strictly, a loan, but it is so regarded and spoken of in ordinary language, and we think that business paper discounted for a director or his firm should be shown as a liability. We believe that to be the general practice.

UNCLAIMED DIVIDENDS.

Question 595.—Section 114 of the Bank Act requires a return to be made annually of all dividends which have remained unpaid beyond five years. Are not such dividends, as arrears of interest, outlawed in many of the provinces under provisions respecting prescription?

Answer.—Under sections 92 and 57 (5) of the Bank Act the liability of the bank to repay moneys deposited, with the interest, if any, and to pay dividends declared on its capital stock, is exempt from the operation of the Statute of Limitations or any law relating to prescription. These clauses are retroactive.

POWER OF PROVINCIAL LEGISLATURES TO TAX BANKS.

Question 596.—Under what authority does the Provincial Government tax banks?

Answer.—Section 92, sub-section 2 of the British North America Act gives the Provincial Legislature the *exclusive* right to make laws in relation to "direct taxation within the Province in order to the raising of a revenue for provincial purposes." See also the well-known case of *Bank of Toronto* v. *Lambe,* 12 A.C. 575, in which it was decided that the Provincial Legislature has the power to tax banks.

POWERS OF QUEBEC MUNICIPALITIES TO TAX BANKS.

Question 597.—Has a town corporation in the Province of Quebec power to levy a business tax on banks?

Answer.—We are advised that the Municipal Act of the Province of Quebec does not give town corporations power to impose a business tax on banks, and that if there is no reference to such a right in the town's charter, authority would have to be obtained from the Legislature.

SECTION 76 OF THE BANK ACT—DEPOSIT OF TITLE DEEDS WITH PROMISE TO EXECUTE MORTGAGE.

Question 598.—A borrower when obtaining a loan from a bank offers to leave with the bank the title deeds to his property, and a written undertaking that if he fails to pay the loan at maturity he will mortgage the property and retire the loan from that source. Would the acceptance of this proposal be a contravention of section 76, sub-section 2, clause (c) of the Bank Act?

Answer.—The acceptance of such a proposal would be a contravention of section 76, sub-section 2 (c) of the Bank Act. The bank, by virtue of the deposit of title deeds, could not lay claim to any security therein.

SECTION 95 (3) OF THE BANK ACT. PROVINCIAL LAW REGULATING CAPACITY TO OPERATE BANK ACCOUNT.

Question 599.—Referring to section 95 (3), Bank Act, is there a law in any of the Provinces which prohibits deposits of the kind mentioned? Which Provinces are concerned? Presumably the law would relate to minors.

Answer.—We do not know of any provincial law which expressly prohibits or restricts persons depositing money in and withdrawing same from a bank, except the Province of Quebec, where the following persons are deemed incapable of contracting (which probably includes depositing money in and withdrawing it from a bank), viz: minors, interdicted persons, married women (unless legally separate as to property with the right of administration), persons insane or suffering temporary derangement of intellect, and persons affected by civil degradation. In the other Provinces, see *Freeman* v. *Bank of Montreal,* 26 O.L.R. 451.

KEYS AND COMBINATIONS OF BRANCH BANK LODGED WITH ANOTHER BANK.

Question 600.—The manager and accountant of a bank hand to another bank in the same city a sealed package represented to contain duplicate keys and combinations of all the locks in the office, with the request that they be held in safekeeping, and delivered only on the joint order of officials acting as manager and accountant respectively, who may be in charge at any time. In case of the absence or incapacity of manager or accountant or both, would the custodian be justified in delivering the package to other officials who might for the purpose claim to be acting? If so, would not either of the applicants be greatly assisted in obtaining fraudulent possession of keys or combinations?

Answer.—We think that the bank holding the package would only be justified in delivering the same strictly within the terms of the conditions on which it was lodged—that is "on the joint order of the officers acting as manager and accountant who may be in charge at any time." As to who should be considered to be acting in these capacities is a question of fact depending altogether on the circumstances of the particular case, and it would be impossible to express an opinion without knowing all the circumstances. If the officials claiming the package are, as a matter of fact, acting as manager and accountant, and in charge at the time, they are entitled to the parcel; if not, they are not entitled to it.

BANKING PRACTICE—CHECKING TELLER'S CASH.

Question 601.—Is it the proper practice for a branch manager to count the teller's cash for the day before it has been made up and listed in the cash book by the teller? Can the teller properly refuse to continue to handle the cash if the manager takes possession of it before the same has made up and listed?

Answer.—To count the teller's cash before it is made up and listed by him is an effective check and a perfectly proper practice, but the examination should be carried out in the presence and under the actual observation of the teller himself. He could properly refuse to be responsible for the cash if the taking possession of it by the manager means that it is taken out of his hands and from under his continuous observation.

DELIVERY OF MONEY PARCEL AFTER BANKING HOURS.

Question 602.—The agent of an express company, with which a special contract exists, brings to the bank office at 5 p.m a parcel of money, and requests the one officer whom he finds there, to take delivery. This is declined as the safe (which has a time lock) is closed. Is the express company relieved from liability because of this tender of delivery?

Answer.—When the company makes a tender of delivery at the proper time, in a proper place, to a proper officer of the bank, in accordance with the terms of the special contract, its liability under that contract would probably be no longer in force, and the company would only be liable thereafter for the ordinary care of a bailee. We do not think, however, that a tender of delivery such as that described comes within the above conditions, and we are of opinion the company's liability continues as if the tender had not been made.

MONEY PARCEL RECEIPTED FOR BY EXPRESS AGENT IN BANK'S OWN OFFICE.

Question 603.—If a parcel of money is receipted for by the local agent of an express company in a bank's own office would the express company be legally responsible for the loss if the money should be lost or stolen while being conveyed by the local agent from the bank to his own office? No special authority from the express company is held authorizing the local agent to call at the bank and receipt for such parcels.

Answer.—Without being advised of the extent of the local agent's authority, and the regular course of dealing, knowledge of which could be brought home to the company, it is impossible to express an opinion as to the liability of the company under the circumstances stated in the question. If it was beyond the scope of the agent's authority the company is not liable. The answer to the question would depend upon the course of dealing between the bank and the company, and upon the real authority of the agent, or upon the authority which it might he held the company had held out as possessed by him.

MONEY FOUND IN THE PUBLIC DEPARTMENT OF A BANK.

Question 604.—A small sum has been found on the floor of the bank outside the counter. The party finding it has handed it to the manager, stating that he will consider himself entitled to the money in the event of its being unclaimed. Has he a legal right to it or should the money be retained by the bank?

Answer.—The money should be returned to the finder unless the true owner turns up.

REGISTRATION OF PARTNERSHIPS—ONTARIO.

Question 605.—What is the law governing the registration of business names such as: Jones & Jones; the Jones Company; Jones & Brothers; Jones & Company; the Jones Publishing Company?

Are there any penalties in the Province of Ontario for carrying on business under names such as any of these without registration? If there are penalties is the law enforced?

Answer.—The law regarding partnerships varies in the different provinces. In Ontario all partnerships for trading or commercial purposes (as distinguished from non-trading partnerships like a firm of accountants) must be registered except associations of individuals for the manufacture of butter or cheese and contributing produce from their dairies for that purpose, the object of registration being to inform persons who may deal with the partnership of the parties composing it. The penalty in Ontario for non-registration is

$100 to each member. We have no means of knowing whether the penalties are enforced or not.

WHAT CONSTITUTES PARTNERSHIP—REGISTRATION.

Question 606.—Should a private banking firm, whose business is confined strictly to private banking, register a certificate of the co-partnership, under cap. 152, R. S. O.?

Answer.—The answer to this question depends upon whether a private banking firm is "a partnership for trading purposes" within the meaning of the statute. The statute is a remedial one, and both by the rules of construction adopted by the court and by the express provisions of the Interpretation Act, it should receive "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act." The object of the Act is, of course, to inform persons dealing with partnerships of the names of the partners, and the changes in or dissolution of the firm. It is confined to "partnerships for trading, manufacturing or mining purposes." There are doubtless good reasons why it did not include partnerships of every kind, and no doubt in ascertaining what is a partnership for the purposes mentioned in the Act, the fair, large and liberal construction and interpretation referred to must be applied.

In an English case in which the question of what was an occupation of a house for the purpose of trading came up, the court used these words:—

"Undoubtedly, if we are to take the term 'for the purposes of trade' as relating only to the business of buying and selling, no one can say that there is any buying or selling in carrying on the business of a telegraph company. It was never the intention of the legislature so to limit the meaning of the word 'trade.' It is only the literal meaning of the word which is to be regarded. In literature of all descriptions, both in prose and verse, we find that the word 'trade' is often used in a much more extensive signification than to indicate merely the operations or occupation of buying and selling."

In illustrating their meaning the court further adds, "A banker's is a shop . . . and there again there is nothing like buying and selling as generally understood, but it is a trade or business of a description quite *sui generis*."

In this case the court held that the business of a telegraph company was "for purposes of trade," within the meaning of the Act, and we think that the court here would hold that a private banking partnership is a partnership for trading purposes within the meaning of our Act, and therefore the firm should register the partnership declaration required by the Act.

RESTRICTION IN A DEED OF PARTNERSHIP.

Question 607.—If by the terms of the deed of partnership special restrictions are fixed as to the mode in which the partnership may be bound, would these affect the bank in the absence of actual notice.

Answer.—We think that the bank would not be bound by these restrictions unless it has actual notice.

LIABILITY OF AN AGENT FOR TRANSACTIONS ON THE COMPANY'S BEHALF.

Question 608.—Is the properly authorized agent or official of any company personally liable for transactions on the company's behalf which are within his powers?

Answer.—We do not think an agent is liable under the circumstances mentioned.

JOINT STOCK COMPANIES—LIMITATION OF BORROWING POWERS.

Question 609.—Section 69, sub-section 2 of the Companies Act says: "Nothing in this section contained shall limit or restrict the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed on behalf of the company." As a cheque is a bill of exchange within the meaning of the Bills of Exchange Act, would not a bank be justified in advancing money to a company in the form of an overdraft, provided always that they had the account covered before surrendering the cheques?

Answer.—We do not think that the provisions of the Companies Act respecting the borrowing powers of joint stock companies would cover an overdraft; that is not borrowing on a bill of exchange, in the sense referred to by the Act. Although an overdraft is created by the company drawing cheques (which are bills of exchange) upon the bank, they cannot be said to be borrowing on these cheques, because when a cheque for which there are no funds is paid the amount thereof becomes a direct loan to the company, and the cheque plays no further part in it.

British Columbia Companies—Statutory Borrowing Restrictions.

Question 610.—I have always understood that British Columbia companies cannot borrow from a bank in excess of the paid-up capital. Is this correct? If so, would a special resolution of the shareholders authorizing borrowing in excess of paid-up capital be sufficient authority for a bank to advance money over and above the amount of paid-up capital? I am unable to find any provision in Companies Act restricting borrowings to amount of paid-up capital. Can you inform me on this subject?

Answer.—The restriction referred to is imposed in paragraph 72 of Table A appended to the British Columbia Companies Act, which prescribes that current borrowings made by the directors must not exceed the issued share capital unless sanction has been given by the company at a general meeting of shareholders.

Debentures Issued without Coupons.

Question 611.—A trading company makes an issue of debentures, secured by mortgage, over all its property, to which debentures no coupons are attached. Apart from the question of the value of the property of the company, would such issue be looked upon as a desirable security for advances by a bank? If not, why not?

Answer.—It is not made quite clear whether the question has relation to the fact that the debentures are those of a trading company, or to the fact that no coupons are attached.

As to the former we do not think that the debentures of a trading company are good security for the bank, for the reason that they are usually extremely difficult to sell.

As to the point of their not having coupons for the interest, that might or might not be a serious objection. It would, no doubt, in any case impair their selling value, for people would in such case have to send the debentures every time they wished to collect the interest, and if they were payable at a distance from the place where the holder resided, this might be quite a serious item. We do not, however, see any other objection from this point of view.

SHAREHOLDER'S RIGHTS TO INSPECT THE BOOKS OF A CORPORATION.

Question 612.—Has a shareholder in a bank or corporation a right to see the minutes of the board meetings?

Answer.—No. As far as shareholders in banks are concerned they have no right to see any of the books of the bank. Shareholders in other joint stock companies have certain rights, which so far as Dominion incorporations are concerned are indicated in section 91 of the Companies Act.

JOINT STOCK COMPANY — TRANSFER OF SHARES WITHOUT DIRECTORS' CONSENT.

Question 613.—The by-laws of a joint stock company forbid the transfer of stock by shareholders without the consent of the directors. Would a transfer of paid-up stock be valid if made in the absence of such consent, or in the case of its refusal?

Would your answer also apply in the case of stock not fully paid up?

Answer.—In the case of stock on which there is a liability we think that under such a by-law the directors might refuse to permit the transfer; but they cannot act capriciously; they must accept a transferee who is in good financial standing, and can refuse only on substantial grounds.

If the stock is fully paid up, and no further liability exists, the directors would not, we think, be able to prevent the transfer, notwithstanding the by-law, unless under very special circumstances.

The law on these points is fully discussed in *Smith* v. *Bank of Nova Scotia,* (1883), 8 S. C. Can. 558, in which the right of a shareholder in a bank to transfer partially paid stock to a solvent transferee without the consent of the directors is involved.

CHATTEL MORTGAGE ON GROWING CROPS WHERE LAND MORTGAGED TO ANOTHER PARTY.

Question 614.—Jones's farm is mortgaged to a loan company, and his growing crops are covered by a chattel mortgage to a private banker. The loan company take proceedings to sell the farm. Will the chattel mortgage hold good against them or can the company take the crop without paying the private banker?

Answer.—The law on this subject is clearly settled in Ontario by the case of *Bloomfield* v. *Hellyer,* reported in Appeal Reports, vol. 22, p. 232, the head note of which is as follows:

" A mortgagor after default is, as far as crops growing " upon the mortgaged land are concerned, in the position of a " tenant at sufferance, and cannot by giving a chattel mortgage upon the crops confer a title thereto, upon the chattel " mortgage to the prejudice of the mortgagee of the land, or " any one claiming under him, who has entered into possession " of the land before the crop is harvested."

The result of this decision is that the mortgagor can by chattel mortgage grant to the chattel mortgagee only such interest in the growing crops as he himself has, and, as this interest is subject to the right of the mortgagee of the land to enter, upon default, and take possession of the land, including the crops, the chattel mortgagee would have no claim against the mortgagee of the land, because he took possession and removed the crops.

LIABILITY OF VESSEL OWNER FOR COST OF CARGO PURCHASED BY THE MASTER OF THE VESSEL.

Question 615.—Can a master of a schooner, not being owner or part owner, make a vessel liable for the cost of a cargo of grain? If he buys a cargo, giving in payment a draft on a third party not interested in the vessel, can the holder in the event of dishonour look to the vessel or her owners?

Answer.—We think the master has no power to make the vessel liable for the cost of purchasing a cargo.

TRUST FUNDS DEPOSITED IN A PRIVATE BANK.

Question 616.—A solicitor or trustee deposits a client's money in a private bank, without instructions from the parties interested. In case of loss would he be held personally responsible?

Answer.—This would depend altogether on the facts. If, *e.g.*, there were no better place of deposit available, and the alternative would be to retain the money in his own house at risk of robbery, and if the other circumstances made the course one which any prudent man may adopt in dealing with his own money, the trustee would probably not be under personal responsibility.

TRUST COMPANIES.

Question 617.—Why do trust companies in Canada require such large paid-up capitals? How do they employ their money?

Answer.—Trust companies doubtless find that their business and credits are best subserved by having large capitals, and paid-up rather than partially paid, because of the liability attached to the latter. The Government returns show that investments are made of the capital.

DEPOSITS PAYABLE AFTER NOTICE.

Question 618.—(a) When a bank supplies a savings depositor with special savings department cheques, does not the deposit practically become payable on demand?

(b) If so, is the bank justified in including such deposits among "deposits payable after notice" in its returns to the Government or does doing so amount to sending a misleading, if not false, return.

(c) If there is a difference between such savings deposits and ordinary current accounts, please explain it.

Answer.—(a) No. The mere furnishing of special savings department cheques for withdrawal purposes does not of itself imply that the deposits will be repaid on demand, as the rules and regulations applicable to the account, and which form the contract between the parties, would still govern.

(b) Such deposits are properly treated as deposits payable after notice.

(c) The difference between deposits in the savings bank department and deposits in ordinary current account is that with regard to the former the banks reserve under the rules and regulations of the department the right to require a specific notice—usually 15 days—of withdrawal, while current account deposits are payable on demand.

ANNUAL LIQUIDATION OF BANK LOANS.

Question 619.—Why does a bank like firms to clear up their loans annually when said firms are showing a regular increase in their net surplus?

Answer.—Annual liquidation of liabilities not only demonstrates to a bank its customers' ability to pay, but also obviates the locking up, in fixed or dead loans, of banking capital, which should always be kept turning over and as liquid as possible.

CALL LOANS—NEW YORK MARKET.

Question 620.—"Call loans, New York Market." What is the meaning of the expression, "Call loans at 3 per cent.?" Does it mean that the money must be paid whenever demand is made? Is the interest calculated at 3 per cent. per annum for the actual number of days the loan is outstanding, or does it mean that the borrower must pay 3 per cent. of the principal regardless of the time the loan was out? Can a borrower in such a transaction by paying an exorbitant rate obtain as of right an extension?

Answer.—The expression means that the rate of interest being charged on loans repayable "at call," *i.e.*, on demand, is 3 per cent. per annum. The money must be paid when demand is made at the option of the lender. The interest is calculated for the number of days during which the loan has been current. A borrower "at call" cannot claim any extension as of right; if he could the loan would lose its distinctive character.

"INDEX NUMBER."

Question 621.—Please explain the meaning of the "Index" number, to which allusions are frequently made in financial papers. It apparently refers to the price of commodities.

Answer.—It is made up by adding the prices of certain quantities of the principal staple commodities, and is used for the purpose of comparing the variation of values from time to time.

BOOKS ON BANKING LAW.

Question 622.—What are the principal publications bearing on the law of banking in Canada, and giving legal decisions, etc.?

Answer.—The standard works on Canadian banking law are Falconbridge's "Banking and Bills of Exchange" (Canada Law Book Co.), and Maclaren's "Banks and Banking" and "Bills, Notes and Cheques" (The Carswell Co., Ltd.).

APPENDIX

BY-LAWS
OF THE CANADIAN BANKERS' ASSOCIATION.

ARTICLE 1.—DEFINITIONS.

In the following by-laws, unless there be something in the subject or context inconsistent therewith, the words:

1. "The association" shall mean "The Canadian Bankers' Association" incorporated by special Act of the Parliament of Canada (63 and 64 Vict. chap. 93).

2. "The executive council," or "The council" shall mean "The executive council of the Canadian Bankers' Association."

3. "Members" shall mean "members of The Canadian Bankers' Association."

4. "Journal" shall mean the "Journal of The Canadian Bankers' Association."

5. "Person" shall include "any body corporate and politic."

ARTICLE 2.—GENERAL MEETINGS.

1. The annual general meeting of the association shall be held on the second Thursday of the month of November in each year, at such time and at such place as the executive council may determine.

2. Special general meetings of the association may be convened at any time by the president, and may also be convened by the president, or secretary-treasurer on the written requisition of at least five members of the association.

3. Any such requisition, and the notice calling any special general meeting, shall specify the object of the meeting. The requisition shall be signed by the members making the same, and shall be deposited at the office of the secretary-treasurer. It may consist of several documents in like form each signed by one or more of the requisitionists. The meeting must be convened for the purposes specified in the requisition.

4. In case the president or secretary-treasurer for seven days after the deposit of such requisition fails to give notice of the special general meeting, the requisitionists may themselves give notice of the meeting which shall be held within six weeks after the deposit of the requisition therefor.

5. Special general meetings shall be held at such time and place as shall be mentioned in the notice calling the same.

ARTICLE 3.—PROCEEDINGS AT MEETINGS.

1. The business of the annual general meeting shall be to receive and consider the statement of receipts and disbursements, the balance sheet, and the report of the secretary, and of the auditors, to elect through the representatives or proxies of the members of the Association from among the chief executive officers (as defined by charter of incorporation) of the said members a president, four vice-presidents, and seventeen councillors, all of whom shall hold office until the next annual general meeting, or until their successors are appointed. Honorary presidents of the association, not exceeding four in number, may also be elected who shall hold office until the next annual general meeting after their election.

At any annual general meeting of the association any business may be transacted.

2. At any special general meeting of the association only such business shall be transacted as is mentioned in the notice calling such special general meeting.

3. At any annual or special general meeting seven persons personally present and duly representing members of the association shall be a quorum for the choice of a chairman, and the adjournment of the meeting. No business shall be transacted at any general meeting unless the quorum requisite be present at the commencement of the business.

4. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon requisition as aforesaid, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

5. Every question submitted to a meeting shall be decided, in the first instance, by a show of hands, and in the case of an equality of votes the chairman shall, both on show of hands and at the poll, have a casting vote in addition to the vote or votes to which he may be entitled as a chief executive officer of a member.

6. At any meeting, unless a poll is demanded by the chairman or by at least five executive officers, a declaration by the chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book of proceedings of the association shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

7. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the chairman of the meeting directs.

8. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

ARTICLE 4.—EXECUTIVE COUNCIL.

1. The executive council of the association shall consist of the president and vice-presidents, and the seventeen councillors aforesaid, and five shall form a quorum for the transaction of business.

2. No business shall be transacted at any meeeting of the executive council unless the quorum requisite be present at the commencement of the business.

3. The honorary presidents shall also have seats on the executive council, but shall not be entitled to vote.

ARTICLE 5.—MEETINGS OF EXECUTIVE COUNCIL.

1. The executive council may meet together for the despatch of business, adjourn and otherwise regulate its meetings, as it, by resolution or otherwise, may determine from time to time.

2. The Secretary-Treasurer shall at any time at the request of the President or any two vice-presidents or any other three members of the Executive Council convene a meeting of the council, provided, however, that no business shall be transacted at a meeting called at the request of three members of the Executive Council unless the notice calling the meeting specifies in general terms that such business will be transacted thereat, but this provision shall not apply to any meeting called at the request of the President or any two vice-presidents.

ARTICLE 6.—VOTES OF MEMBERS AND ASSOCIATES.

1. At all meetings of the association and of the executive council, on a show of hands every member represented in person shall have one vote, and upon a poll every member represented in person or by proxy shall have one vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting vote in case of a tie.

2. Each associate shall also have one vote on all subjects except the following, on which members only shall be permitted to vote:—

(a) Election of officers,
(b) Action relating to proposed legislation,
(c) By-laws,
(d) Adding to, or amending the charter,
(e) All other subjects on which general action by the members is contemplated.

3. All votes may be given either personally by the chief executive officer of a member or by a duly authorized representative.

4. Any member, not represented at a meeting of the association or executive council by one of the officers named in section 8 of the charter of incorporation may vote by proxy.

5. A duly authorized representative may be appointed in writing by the chief executive officer of the member to be represented, or by means of a telegram from the same official.

ARTICLE 7.—NOTICE OF MEETINGS.

1. Thirty days' notice shall be given of every general meeting of the association whether annual or special.

2. With the consent in writing of two-thirds of the members, a special general meeting may be convened by a shorter notice, and in any manner they think fit.

3. Any notice of meeting or any other notice authorized or required to be given to any member of the association shall be deemed sufficiently given, if sent through the post office in a prepaid envelope or wrapper to the head office of any such member, addressed to such member or to the general manager, or cashier of such member, and in the case of the Bank of British North America, through its chief office in the City of Montreal, addressed to it or to its general manager; and any notice sent by post shall be deemed to have been given on the day following that on which the envelope or wrapper containing the same was posted and deposited in the post office, and in proving the giving of such notice, it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and mailed.

4. Any notice authorized or required to be given to any member of the executive council may be sent by the secretary-treasurer by hand, or through the post office, or by telegraph, or in any other manner which the council may prescribe.

5. Any notice authorized or required to be given to any associate as such shall be sufficiently given, if given by advertisement once published in a newspaper in the cities of Montreal and Toronto.

6. Where a given number of days' notice, or notice extending over any period, is required to be given, the day of service shall, unless it is otherwise provided, be counted in such number of days or period.

7. The accidental omission to give any such notice to any of the members shall not invalidate any resolution passed at any such meeting.

ARTICLE 8.—POWERS OF EXECUTIVE COUNCIL.

It is hereby expressly declared that the executive council shall have the following powers, that is to say, power

1. To take such steps as it thinks fit to carry into effect any agreement between the association and another party.

2. To appoint and at its discretion remove or suspend such secretaries, clerks, agents, solicitors and servants for permanent, temporary, or special services, as it may from time to time think fit, and to determine their powers and duties, and fix their salaries or emoluments, and to require security in such instances and to such amount as it thinks fit.

3. To institute, conduct, defend, compound, or abandon any legal proceedings by and against the association, or its officers, or otherwise concerning the affairs of the association, and also to compound and allow time for payment or satisfaction of any debts due, or of any claims or demands by or against the association.

4. To refer any claims or demands by or against the association to arbitration, and observe and perform the awards.

5. To determine who shall be entitled to sign bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, and documents on behalf of the association.

6. From time to time to provide for the management of the affairs of the association abroad or in any special locality in such manner as it thinks fit, and in particular to appoint any persons to be the attorneys, agents or solicitors of the association with such powers and upon such terms as may be thought fit, and also to engage counsel where such services may be needed.

7. To enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and behalf of the association as it may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the purpose of the association.

8. From time to time to repeal, amend or add to any of the by-laws of the association, except those relating to dues, to the curator and his duties, and to the circulation, but every such repeal, amendment or addition shall only have force until the next annual general meeting of the association, and if not confirmed thereat shall thereupon cease to have force.

ARTICLE 9.—BY-LAWS.

Notices of proposed amendments to the by-laws of the association are to be submitted to the secretary-treasurer as follows:

(a) In the case of a general meeting, five weeks before such meeting.

(b) In the case of a meeting of the executive council, one week before such meeting and the secretary-treasurer shall forward to every member of the association a copy of such proposed amendment before or at the same time the notices of such meeting are despatched.

ARTICLE 10.—SECRETARY-TREASURER.

1. The executive council shall have power from time to time to appoint a secretary-treasurer, and to remove him from office, and to fix his remuneration and the terms of his engagement.

2. The executive council may appoint an assistant secretary-treasurer or acting secretary-treasurer, who shall for the purposes of these presents, be deemed to be the secretary-treasurer.

3. The secretary-treasurer shall make and have charge of all records of the association and of the executive council. He shall have charge of the offices and property of the association, and have supervision of all subordinate officers and employees. He shall furnish upon request information on any subject within his jurisdiction to the executive council. He shall make report to the executive council of the conduct of his office. He shall perform all duties imposed upon him by the by-laws and shall be subject to the direction of the executive council.

He shall collect all dues, receive and account for all moneys due to the association, pay out moneys only upon cheques signed by the president or one of the vice-presidents, and countersigned by the secretary-treasurer.

4. The secretary-treasurer, or acting secretary-treasurer, and the assistant secretary-treasurer, shall each give to the Canadian Bankers' Association a bond in amount and form satisfactory to the executive council, and the premium thereon shall be paid by the association.

5. A casual vacancy in the office of the secretary-treasurer shall be immediately filled by the council, and the person appointed to fill such vacancy shall hold office only while the person in whose place he was elected would have held office.

6. The secretary-treasurer and all subordinate employees may retire from their office by giving three months' notice in writing of their intention so to do, and such resignation, if accepted, shall take effect upon the expiration of such notice.

The association, when requiring to dispense with their services, shall give to the secretary-treasurer and all subordinate officers and employees three months' notice in writing of their intention so to do, or three months' salary in lieu of notice.

ARTICLE 11.—SUB-SECTIONS.

1. Existing sub-sections of the association are hereby continued as, and constituted, sub-sections of the association as incorporated. Sub-sections hereby or hereinafter constituted may pass by-laws for their guidance, subject always to the provisions of the charter of incorporation, and the by-laws of the association.

ARTICLE 12.— JOURNAL, LECTURES, ETC.

1. An editing committee appointed by the association shall supervise the publication of the "Journal of the Canadian Bankers' Association," and the executive council shall appoint such other officers and engage such paid assistance, and apply in paying the expenses of the Journal such part of the funds of the association as in its judgment may be necessary; and shall also make such provisions and arrangements from time to time as it deems proper, for lectures, discussions, competitive papers, and examinations.

ARTICLE 13.—THE SEAL.

1. The seal of the association shall be in the custody of the secretary-treasurer, and shall not be affixed to any instrument except by the authority of a resolution of the executive council and in the presence of the president or a vice-president and of the secretary-treasurer, and the president, or a vice-president, and the secretary-treasurer shall sign every instrument to which the seal of the association is so affixed.

The seal of the association shall bear the device of a...... and shall have legibly engraved upon it the registered name of the association.

ARTICLE 14.—AUTHENTICATION OF DEEDS AND DOCUMENTS.

1. All deeds executed on behalf of the association may be in such form, and contain such powers, provisoes, conditions, covenants, clauses and agreements as the executive council shall think fit, and in addition to being sealed with the seal of the association, shall be signed by the president or a vice-president and countersigned by the secretary-treasurer.

2. All cheques or orders for payment shall be signed by the president or a vice-president and countersigned by the secretary-treasurer. Bills of exchange lodged with the association's bankers for collection may be drawn on its behalf by the secretary-treasurer.

3. Cheques or other negotiable instruments, deposited with the association's bankers for collection, and requiring the endorsement of the association, may be endorsed on its behalf by the secretary-treasurer.

4. All moneys belonging to the association shall be deposited with the Merchants Bank of Canada, or such other bankers as the executive council shall from time to time think fit; and all receipts for money paid to the association shall be signed by the secretary-treasurer; and such receipt shall be an effectual discharge for the money therein stated to be received.

ARTICLE 15.—ACCOUNTS.

1. The executive council shall cause true accounts to be kept of the sums of money received and expended by the association, and the matters in respect of which such receipt and expenditure takes place.

2. The executive council shall from time to time determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounts and books of the association, or any of them, shall be opened to the inspection of the members; and no member shall have any right of inspecting any account, book, or document of the association, except as authorized by the executive council, or by a resolution of the association in general meeting.

3. At the annual general meeting in every year the secretary-treasurer shall lay before the association a statement of receipts and disbursements and a balance sheet, containing a summary of the assets and liabilities of the association, made up to the thirtieth day of September preceding the meeting, and the accounts and balance sheet shall be signed by the secretary-treasurer, and certified correct by the auditor or auditors.

4. A printed copy of such account and balance sheet shall, seven days previously to the meeting, be forwarded to the members of the association.

ARTICLE 16.—AUDIT.

1. Once at least in every year, the accounts of the association shall be examined, and the correctness of the statement of receipts and disbursements and balance sheet ascertained by a qualified accountant or a firm of qualified accountants who shall act as auditor or auditors.

2. The auditor or auditors shall be appointed at the annual general meeting, and their remuneration shall be fixed by the executive council.

3. The auditor or auditors shall hold office until the next annual general meeting, and shall be eligible for re-election. Any casual vacancy in such office may be filled by the council.

4. The auditor or auditors shall be supplied with copies of the statement of receipts and disbursements, and balance sheet intended to be laid before the association at the annual general meeting one month at least before the meeting to which the same are to be submitted, and it shall be their duty to examine the same with the accounts and vouchers relating thereto, and to report thereon.

5. The auditor or auditors shall at all reasonable times have access to the books and accounts of the Association.

ARTICLE 17.—PRESIDENT.

1. The president of the association shall preside at all meetings, and shall be a member *ex-officio* of all committees.

2. In the absence of the president, the members of the council then present, shall choose one of the vice-presidents as chairman; and in the absence of the president and vice-presidents, the members of the Council then present may choose some one of their number as Chairman.

3. On an extraordinary vacancy of the office of president or of any other officer or in the executive council, a meeting of the executive council shall be summoned with as little delay as possible and a new president or other officer of the association or member of the council, as the case may be, shall be chosen to hold office until the next annual general meeting.

ARTICLE 18.—BORROWING POWERS.

The association may, from time to time, at its discretion, raise or borrow by way of overdraft any sum or sums of money for the purposes of the association.

ARTICLE 19.—ANNUAL DUES.

1. The dues or subscriptions payable to the association by members thereof shall be $200 for each $1,000,000 of paid-up capital or fraction thereof, as appearing in the return for the month of September in each year.

2. The dues or subscriptions payable to the association by the associates thereof shall be one dollar annually. Members' and associates' subscription shall be payable on or before the first day of February and first day of July, respectively, in each year.

ARTICLE 20.—CIRCULATION.

1. A monthly return shall be made to the president of the Association by all Banks doing business in Canada, in the form hereinafter set forth; the said Return shall be made up and sent in within the first twenty days of each month, and shall exhibit the condition of the Bank's note circulation on the last juridical day of the month next preceding; and every such

Monthly Return shall be signed by the Chief Accountant or Acting Chief Accountant and by the President or Vice-President, or by any Director of the Bank, and by the General Manager or other Chief Executive Officer of the Bank at its chief place of business. Every such Monthly Return which shows therein notes destroyed during such month, shall be accompanied by a certicate or certificates in the form hereinafter set forth, covering all the notes mentioned as destroyed in such Return, signed by at least three of the Directors of the Bank, and by the Chief Executive Officer or some officer of the Bank acting for him, stating that the notes mentioned in such certificate or certificates have been destroyed in the presence of and under the supervision of the persons respectively signing such certificate or certificates respectively.

Form of Monthly Return of Circulation Above Mentioned.

Circulation Statement of the ....
Here state name of Bank.......
For the month of....................................19.....
Credit Balance of Bank Note Accounts on last day of preceding
. ...month (inclusive of unsigned notes)..........$
Add notes received from printers during month. viz.:
From .... $...........$........
From .... $...........$........
$
Less notes destroyed during month (as per
certificate herewith) ....$........
Balance of Bank Note Accounts on last day of
month .... $........
Less notes on hand, viz:
Signed .... $
Unsigned .... $...........$........
Notes in circulation on last day of month...........$........
Paid-up capital on last day of month................$........
Reserve Fund on last day of month..................$........
Deposit in Central Gold Reserves on last day of month $........
Notes of other Canadian Banks held on last day of
month ....$........

....
Chief Accountant.

We declare that the foregoing Return, to the best of our knowledge and belief, is correct, and shows truly and clearly the state and position of the Note Circulation of the said Bank during and on the last day of the period covered by such Return.

Dated at.........................this.................day of
.....................19......

....
President.

....
General Manager.

FORM OF CERTIFICATE OF DESTRUCTION OF NOTES ABOVE MENTIONED.

Certificate of Destruction of Notes of the (*here mention name of Bank*), accompanying Monthly Circulation Statement for month of..................A.D. 19......

We, the undersigned, hereby certify that we have examined bank notes of this Bank amounting to $.............., consisting of the following, viz.: (here set out the denominations) and have burned and destroyed the same and that the said notes so burned and destroyed by us are not included in any other Certificate of Destruction of Notes signed by us or any of us, or to the best of our knowedge and belief, by any other person to accompany the present or any Monthly Circulation Statement made or to be made to the President of the Canadian Bankers' Association.

.... this......................day of
19...

....

....

....

Directors.

....

General Manager.

2. The President of the Association or the person who, during a vacancy in the office of or in the absence of the President, may be acting as President of the Association, may, from time to time, by writing under his hand, appoint one or more person or persons to be the representative or representatives of the Association at the burning and destruction of the bank notes of any Bank specified in such appointment, and when bank notes shall have been burned and destroyed by or in the presence and under the supervision of any such representative or representatives, his or their signatures to the certificate of destruction, in the prescribed form, shall for all purposes be equivalent to the signatures of at least three Directors of the Bank in the foregoing sub-section provided for. The President, or Acting President as aforesaid, may, from time to time rescind the authority of any such representatives so appointed, and the Banks affected by such rescission shall be immediately notified of such rescission.

3. Whenever in any month the amount of the notes of a Bank in circulation shall be in excess of its unimpaired paid-up capital, it shall be the duty of such Bank, within the first thirty days after the last day of such month, to make to the President of the Association a Return showing the same particulars as those required under Section 61, sub-sections 17 and 18, of the Bank Act. Such Return shall be signed as provided by the said section of the said Act.

4 *The Bank of British North America.* — For all purposes of this By-law, the chief place of business of the Bank of British North America shall be the chief office of the said Bank at the City of Montreal, in the Province of Quebec.

And, in the case of the said Bank of British North America, the said Returns shall be signed by the Assistant Secretary or Acting Assistant Secretary, and by the General Manager or Acting General Manager, of the said Bank; and the said certificate of destruction of notes shall be signed by the General Manager or Acting General Manager, and also either by the Inspector or Assistant Inspector, and the Local Manager or Acting Local Manager of the Montreal Branch of the said Bank, or (in substitution for the signatures of such last-mentioned officials) by a representative of the Association duly appointed for that purpose, from time to time, by the President or Acting President, instead of by the persons respectively hereinbefore directed to sign the said Returns respectively.

5. *Penalty for Neglect.* Every Bank which neglects to make up and send in, as aforesaid, any Return required by this By-law within the time by this By-lay limited, shall incur a penalty of fifty dollars for each and every day after the expiration of such time during which the Bank neglects so to make up and send in such Return.

6. *Inspection.* The Executive Council shall have power, by resolution, at any time to direct that an inspection shall be made of the circulation accounts of any Bank by an officer or officers to be named in such resolution, and such inspection shall be made accordingly.

7. *Inspection and Report.* Some person or persons appointed from time to time by the Executive Council of the Association shall, each year make inspection of the circulation accounts of every Bank doing business in Canada, and shall report thereon to the Council; and upon every such inspection all and every of the Officers of the Bank whose circulation accounts shall be so inspected shall give and afford to the Officer or Officers making such inspection, all such information and assistance as he or they may require to enable him or them fully to inspect the said circulation accounts, and to report to the Council upon the same, and upon the means adopted for the destruction of the notes.

8. *Collection of Penalties.* The amount of all penalties imposed upon a Bank for any violation of this By-law shall be recoverable and enforceable with costs, at the suit of the Association, and such penalties shall belong to the Association for the uses of the Association.

9. *Statement of Circulation.* The President of the Association shall each month have printed and forwarded to the Chief Executive Officer of every chartered Bank in Canada, subject

to the Bank Act, a statement of the Circulation Returns of all the chartered Banks in Canada for the last preceding month, as received by him.

ARTICLE 21.—DESTRUCTION OF NOTES OF INSOLVENT BANKS.

1. The President, or the person who during a vacancy in the office of, or in the absence of, the President, shall be acting as President, shall, from time to time, by writing under his hand, appoint two or more persons to be the representatives of the Association at the burning and destruction of the bank notes of any insolvent bank specified in such appointment, and the said representatives shall together with the liquidator make the necessary certificates of destruction.

2. The certificate of destruction shall be in the following form or to the like effect:—

THE CANADIAN BANKERS' ASSOCIATION.

Certificate of Destruction of Notes of............Bank.

We, the undersigned, hereby certify that we have examined bank notes of this Bank amounting to $...............consisting of the following, viz.: (here set out the denominations) and have burned and destroyed the same, and that the said notes so burned and destroyed by us are not included in any other Certificate of Destruction of Notes signed by us or any of us, or to the best of our knowledge and belief, by any other person.

Dated at......................this...................day of
..........................19....

The Canadian Bankers' Association.
....
....
....
Liquidator of............Bank.

ARTICLE 22.—DESTRUCTION OF BANK PLATES.

The President, or the person who during a vacancy in the office of, or in the absence of, the President, shall from time to time, by writing under his hand, appoint two or more persons to superintend the destruction of obsolete bank plates, dies, and rolls, and the said persons shall, after such destruction, forward a certificate to the Secretary-Treasurer, setting out particulars of the plates, dies or rolls destroyed. Where such bank plates, dies and rolls are the property of a solvent bank, the bank in question shall be represented at the destruction thereof by the manager of its Ottawa branch or by a representative appointed in writing by its chief executive officer.

ARTICLE 23.—BANK PLATES AND NOTES.

1. The Secretary-Treasurer shall keep a book or books wherein shall be kept recorded:

(a) Particulars of all plates, dies and rolls from which the notes of the Chartered Banks in Canada are printed. Such particulars shall show the numbers and styles of plates, dies and rolls and the dates on which the said plates, dies and rolls are engraved and destroyed respectively, together with the names of the parties in whose presence the same are destroyed.

(b) The Certificates of Destruction of notes of Chartered Banks of Canada in liquidation.

2. The Association shall request all bank note companies which have dealings with the Chartered Banks of Canada to furnish on the last day of each month a certified statement giving full particulars of all plates, dies and rolls engraved or laid down during the month.

ARTICLE 24.—CURATOR.

1. Whenever any bank suspends payment a curator, as mentioned in section 117 of the Bank Act, shall be appointed to supervise the affairs of such bank. Such appointment shall be made in writing by the president of the association or by the person who, during a vacancy in the office, or in the absence of the president, may be acting as president of the association.

2. If a curator so appointed dies, or resigns, another curator may be appointed in his stead in the manner aforesaid.

3. The executive council may, by resolution, at any time remove a curator from office and appoint another curator in his stead.

4. A curator so appointed shall have all the powers, and subject to the provisions of article number 24, shall perform all the duties imposed upon him by the Bank Act; he shall also furnish all such returns and reports, and give all such information touching the affairs of the suspended bank as the president of the association or the executive council may require of him from time to time.

ARTICLE 25.—ADVISORY BOARD.

1. Whenever a bank suspends payment and a curator is accordingly appointed, the president shall also appoint a local advisory board consisting of three members, selected generally as far as possible from among the general managers, assistant-general managers, cashiers, inspectors or chief accountants or branch managers of any chartered bank at the place where the

head office of such suspended bank is situated, and the curator shall advise from time to time with such advisory board, and it shall be his duty, before taking any important step in connection with his duties as curator, to obtain the approval of such advisory board thereto. With the sanction of such advisory board, he may employ such assistants as he may require for the full performance of his duties as curator.

CLEARING HOUSE RULES.

ARTICLE 26.—CLEARING HOUSES.

1. *Rules and Regulations.* The rules and regulations contained in this By-law are made in pursuance of the powers contained in the Act to Incorporate The Canadian Bankers' Association, 63 and 64 Vict. chap 93 (1900), and shall be adopted by, and shall be the rules and regulations governing all clearing houses now existing and established, or that may be hereafter established in Canada.

2. Every clearing house throughout Canada shall forward to the secretary-treasurer the usual weekly, monthly and yearly returns, and shall furnish such additional returns as the association may require from time to time.

The following are the rules and regu'ations respecting Clearing Houses:

1. *Formation and Admission of Members.*

(a) The Chartered Banks doing business in any city or town, or such of them as may desire to do so, may form themselves into a Clearing House. The Montreal City and District Savings Bank, located in Montreal, may be admitted to the privileges of the Montreal Clearing House.

(b) Chartered Banks thereafter establishing offices in such city or town may be admitted to the Clearing House as members thereof by receiving the affirmative vote of three-fourths of the members, certifying assent to the constitution, by-laws, rules and regulations, and by subscribing to all agreements in the same manner as the original members.

(c) The Assistant Receiver-General of the Dominion of Canada, located at any Clearing House point, may be admitted to the privileges of the Clearing House, but he shall have no voice in its management.

2. *Objects.*

(a) The objects of the Clearing House shall be the facilitating at one place and at one time of the daily exchanges between the several members, the settlement of the balances resulting from such exchange and the promotion of the interests of the members and the maintenance of conservative banking through wise and intelligent co-operation.

(b) The Clearing House shall not either directly or indirectly be used as a means of obtaining payment of any item, charge or claim disputed, or objected to. It is expressly agreed that any member receiving exchanges through the Clearing House shall have the same rights to return any item, and to refuse to credit any sum which it would have had were the exchanges made directly between the members concerned, instead of through the Clearing House, and nothing in these or any future rules, and nothing done, or omitted to be done thereunder, and no failure to comply therewith shall deprive a member of any rights it might have possessed had such rules not been made, to return any item or refuse to credit any sum; and payment through the Clearing House of any item, charge or claim shall not deprive a member of any right to recover back the amount so paid.

3. *Meetings.*

(a) The Annual General Meeting of the Members shall be convened for the election of officers, the Board of Management, the hearing of yearly reports, and for such other business as may be brought before it. The meeting shall be held on such day and at such time and place as the members may fix by by-law. A fine of five dollars shall be imposed by the Clearing House on any member failing to be represented at an Annual Meeting.

(b) Special General Meetings may be convened by the Chairman or Vice-Chairman, whenever it may be deemed necessary, or on the written requisition of at least three members.

(c) Special General Meetings may be convened by the Chairman or Vice-Chairman, on the written requisition of any member on giving fifteen days' notice.

4. *Votes of Members.*

(a) Each member may be represented at all general meetings by one or more of its principal officers and shall be entitled to one vote.

(b) At all general meetings a quorum for the transaction of business shall consist of a majority of the whole number of members.

5. *Board of Management.*

(a) At every annual meeting of the members there shall be elected by ballot a Board of Management which shall hold office until the next Annual Meeting after its election, or until its successor is appointed.

The Board of Management shall consist of the Chairman, Vice-Chairman, and a Committee, all of whom shall be chosen from among the resident General Managers, and Assistant General Managers, the Managers and Acting Managers of the main offices of the various members. The number of members of such board and the quorum thereof shall be fixed by by-law.

(b) In the absence of any person having a seat on the Board of Management, he may be represented by another officer of the member of which he is an officer.

(c) Meetings of the Board of Management may be held at such times as the members of such Board may determine. A special meeting shall be called by the Secretary-Treasurer on the written requisition of at least three members of the Clearing House for the consideration of any matter submitted by it, of which meeting twenty-four hours' notice shall be given, but if such meeting is for action under Rules 15 or 16, it will be called immediately.

(d) The Board of Management shall have power from time to time to appoint an officer to act as Manager of the Clearing House and to remove him from office, and to fix his remuneration and the terms of his engagement.

(e) The Board of Management shall secure suitable rooms for the Clearing House, and provide proper books, stationery, furniture, and whatever else may be necessary for the convenient transaction of business. It shall also deal with the expenses of the Clearing House, make assessments on the members for their share of the expenses, and exercise general control over Clearing House affairs.

(f) If a vacancy occur in the Board of Management the remaining members thereof shall have the power to fill such vacancy.

6. *Officers.*

(a) The Chairman, or in his absence the Vice-Chairman, or other member of the Board of Management voted to the chair, shall preside over all meetings. In case of a tie, the Chairman shall have the casting vote.

(b) Should the member of which the Chairman is an officer be interested in any matter, his powers and duties shall, with respect to such matter, be exercised by the Vice-Chairman, who shall also exercise the Chairman's duties and powers in his absence.

(c) The Manager shall hold his office until the next annual meeting, unless removed by the Board of Management, or suspended by the members of the Clearing House at a General Meeting.

(d) In case of a vacancy in the offices of Chairman, Vice-Chairman or Manager by reason of death, resignation, inability or any other cause, the Board of Management shall be convened for the election of a successor, who shall serve the unexpired term.

7. *Manager.*

(a) The Manager, or in his absence the officer who is acting as Manager, under control of the Board of Management, shall impose and collect fines for violations of the rules of the Clearing House, and have supervision of all the records of clearances and settlements. He shall have immediate charge of the Clearing House room or building and of all business at the Clearing House, so far as relates to the manner in which it shall be transacted; and the employees of the Clearing House, as well as the clerks of the several members of the Clearing House, shall be under his direction. He shall immediately report to the Board of Management any irregularity coming to his notice in the dealings of any member, or of any bank or institution clearing through a member, and receive the instructions of the Board of Management in regard thereto.

He shall report promptly to each member any error or errors on the part of its officers attending the Clearing House and shall at least every six months render to each member a detailed record of errors and a statement of fines and dues for the period. He shall keep a faithful record of all clearances and settlements, and preserve all vouchers. He shall also keep a record in a book provided for that purpose of all objections to items delivered to members through the Clearing House, or to charges in the exchanges, coming before his immediate notice. This book shall be at all times open to the inspection of the members.

(b) When unable to attend, the Manager may with the approval of the Chairman appoint a bank official to preside during the daily exchange at the Clearing House, providing the appointee is not under the rank of an Assistant Accountant in the main office of one of the members. The Clearing Bank shall be notified of such appointment.

(c) The Manager is *ex-officio* Secretary-Treasurer of the Clearing House.

As Secretary, he shall keep the minutes of general meetings and of the meetings of the Board of Management, in a book provided for that purpose. In the event of his absence at any meeting, a Secretary *pro tem.* may be appointed.

As Treasurer he shall have charge of the funds belonging to the Clearing House and shall disburse the said funds on the order of the Board of Management. He is required to keep a correct record of all money received and disbursed on account of the Clearing House and to submit a detailed statement of the same at the Annual Meeting and whenever requested by the Board of Management.

8. *Expenses.*

The expenses of the Clearing House shall be met by equal assessments upon the members.

9. *Withdrawal.*

Any member may withdraw from the Clearing House by giving notice in writing to the Chairman or Manager between the hours of 1 and 3 o'clock p.m. and paying its due proportions of expenses and obligations then due. The retirement of such member is to take effect from the close of business of the day on which such notice is given. The Manager shall promptly notify the other members of such withdrawal

10. *Clearing Bank.*

(a) The Board of Management shall arrange with a member to act as clearing bank for the receipt and disbursement of balances due by and to the various members; but such member shall be responsible only for the moneys and funds actually received by it from the debtor members, and for the distribution of the same amongst the creditor members, on the presentation of the Clearing House certificates properly discharged. The Clearing Bank shall give receipts for balances received from the debtor members.

(b) The Clearing Bank, or the member, or committee, appointed by the Clearing House from time to time, to perform such duty, shall each morning, as early as possible, furnish the Manager of the Clearing House with the minimum rate of exchange at which Bills of Exchange and Promisory Notes, drawn in sterling, payable at the current rate of exchange, are to be paid that day, and the members shall be promptly advised of this rate.

11. *Payment of Balances.*

(a) The hours for making the exchanges at the Clearing House, for payment of the debit balances to the clearing bank, and for payment out of the balances due the creditor members, shall be fixed by by-law under Rule 17. On completion of the exchanges the balances due to or by each member shall be settled and declared by the Clearing House Manager, and if the clearing statements are readjusted under the provisions of these rules, the balances must then be similarly declared settled, and the balances due by debtor members must be paid into the clearing bank, at or during the hours fixed by by-law as aforesaid, provided that no credit balance, or proportion thereof, shall be paid until all debit balances have been received by the clearing bank. At Clearing Houses where balances are payable in money they shall be paid in legal tender notes of large denominations.

(b) At Clearing Houses where balances are payable by draft, should any settlement draft given to the clearing bank not be paid on presentation, the clearing bank shall at once notify in writing all the other members of such default; and the amount of the unpaid draft shall be repaid to the clearing bank by members whose clearances were against the defaulting member on the day the unpaid draft was drawn, in proportion to such balances. The clearing bank shall collect the unpaid draft, and pay the same to the other members in the above proportion. It is understood that the clearing bank is to be the agent of the associated members, and to be liable only for moneys actually received by it.

(c) Should any member make default in paying to the clearing bank its debit balance, within the time fixed by by-law under Rule 17, such debit balance and interest thereon shall then be paid by the member so in default to the Chairman of the Clearing House for the time being, and such Chairman or his successor in office from time to time shall be a creditor of and entitled to recover the said debit balance and interest thereon from the defaulting member. Such balances, when received by the said Chairman or his successor in office, shall be paid by him to the clearing bank for the benefit of the members entitled thereto.

12. *Objections to Statements. Errors in Exchanges.*

(a) In order that the clearing statements may not be unnecessarily interfered with, a member objecting to any item delivered to it through the Clearing House, or to any charge against it in the exchanges of the day, shall, before notifying the Clearing House Manager of the objection, apply to the Manager or Accountant of the member interested for payment of the amount of the item or charge objected to, and such amount shall thereupon be immediately paid to the objecting member. Should such payment not be made, the objecting member may notify the Clearing House Manager of such objection and non-payment, and the latter shall thereupon deduct the said amount from the settling sheets of the members concerned, and readjust the clearing statements and declare the correct balances in conformity with the changes so made, provided that such notice shall have been given at least half an hour before the earliest hour fixed by by-law, as provided in Rule 11, for payment of the balances due to the creditor members. But if the objecting member has not so notified the Clearing House Manager it shall be the duty, under these rules, of the member interested to make such payment on demand therefor being made at any time up to 1 o'clock p.m. and before 12 o'clock noon on Saturdays, provided, however, that if the objection is based on the absence from the deposit of any cash parcel, or on errors or omissions in cash parcels, notice shall have been given by the member interested before 3 o'clock p.m. and before 12 o'clock noon on Saturdays.

(b) Members shall immediately on discovery notify the Clearing House Manager of all errors or omissions in cash parcels received through the clearings. Such notice shall be given at the latest before three o'clock p.m. on the day the deposit is made and before 12 o'clock noon on Saturdays. He shall in turn notify the Chairman of any case that requires special attention. The Manager of the Clearing House shall be required to forward a list of these errors to each Bank monthly.

(c) In any case in which a member has made a payment, or there has been deducted an amount from the settling sheets of a member, pursuant to paragraph (a) of this rule and regulation, such member may notify the Clearing House Manager in writing not later than three o'clock p.m. of the second banking day after such payment or deduction has been made, that demand is thereby made for an inquiry by a Committee, appointed as hereinafter provided, into all the facts and circumstances relating to such payment or deduction.

(d) The Chairman of the Clearing House, or if the Chairman represents a member that has an interest in the inquiry then the Vice-Chairman, and if the Chairman and Vice-Chairman each represent a member that has an interest in the inquiry then the Clearing House Manager shall thereupon appoint a Committee of three, chosen from the managers, acting managers and assistant managers of the main offices of the various members, to make inquiry into all the facts and circumstances relating to, or in any way connected with, such payment or deduction, and it shall be the duty of such Committee to make such inquiry without delay and to report thereon as hereinafter provided. No member of the Committee shall be an officer of a bank which has an interest in the matter referred.

(e) The Committee shall have the right to require the production of all books and documents of either member, deemed relevant by the Committee, and to require the attendance of all the officers and clerks of the members concerned who have had anything to do with the matter in dispute, and to examine them orally, either one at a time or in the presence of each other, as the Committee may determine. Each member concerned shall have the right to have a senior officer (a manager, assistant manager or accountant) present at the inquiry, and the representatives of the respective members, as well as the persons composing the Committee, shall have the privilege of questioning and cross-questioning the officers and clerks of the respective banks touching the subject matter of the inquiry.

(f) At the conclusion of the inquiry the Committee, or a majority of the Committee, shall as soon as may be convenient, make a written report and finding, to be signed by the persons concurring therein and to be filed with the Clearing House Manager, stating upon which of the members before the Committee the loss, in the opinion of the persons signing the report, should fall, and whether should or should not be a refund of the amount in dispute, or if unable to so report, then to make such other report and finding as may seem to them justified in the premises. A minority report may be made and filed. The Manager of the Clearing House shall send a copy of such report and minority report, if any, to each of the member banks interested.

(g) Members returning items received through the clearings shall attach a ticket to each item, stating the cause for such return and the name of the member so returning.

(h) Cash settlements of errors except for amounts under one dollar are absolutely prohibited. No member is to receive a Clearing House Error Slip unless signed by one or more duly authorized officers of the main office of the member issuing such voucher.

(i) It shall be the duty of each member unable to balance its clearings on the day deposits are made to report the amount of difference to the Manager before the hour set apart for making exchanges on the following business day.

(j) Any items returned mutilated are to be received at the risk of the member making such return, should the depositing member or one of its branches or correspondents object to the mutilation.

(k) Each member shall send to the other members specimen signatures of officers authorized to sign Clearing House Error Slips, and when changes take place as regards such officers a fresh authorization covering all signatures then effective for such member is to be forwarded the other members.

(As amended at Annual General Meeting, November 13th, 1919. Approved by the Treasury Board, 20th November, 1919.)

13. *Items Received in Trust.*

All bank notes, cheques, bills of exchange and other items (hereinafter referred to as "items") delivered through the Clearing House to a member in the exchanges of the day, shall be received by such member as a trustee only, and not as its own property, to be held upon the following trust, namely, upon payment by such member at the proper hour to the clearing bank of the balance (if any) against it, to retain such items freed from said trust; and in default of payment of such balance, to return immediately and before 12.30 p.m., the said items unmarked and unmutilated through the Clearing House to the respective members, and the fact that any item cannot be so returned shall not relieve the member from the obligation to return the remaining items, including the amount of the member's own notes so delivered in trust.

Upon such default and return of said items, each of the other members shall immediately return all items which may have been received from the member so in default, or pay the amount thereof to the defaulting member through the Clearing House. The items returned by the member in default shall remain the property of the respective members from which they were received, and the Clearing House Manager shall adjust the settlement of balances anew.

A member receiving through the Clearing House such items as aforesaid, shall be responsible for the proper carrying out of the trust upon which the same are received as aforesaid, and shall make good to the other members respectively all loss and damage which may be suffered by the default in the carrying out of such trust.

14. *Provision for Default.*

In the event of any member receiving exchanges through the Clearing House making default in payment of its debit balance (if any) then in lieu of its returning the items received by it as provided by Rule 13, the Board of Management may require the members to which the defaulting member, on an account being taken of the exchanges of the day between it and the other members, would be a debtor, in proportion to the amounts which on such accounting, respectively due to them, to furnish the Chairman of the Clearing House for the time being with the amount of the balance due by the defaulting member, and such amount shall be furnished accordingly, and shall be paid by the Chairman to the clearing bank, which shall then pay over to the creditor members the balances due them in accordance with Rule 11. The said funds for the Chairman shall be furnished by being deposited in the clearing bank for the purpose aforesaid. The defaulting member shall repay to the Chairman for the time being, or to his successor in office, the amount of such debit balance and interest thereon, and the said Chairman, or his successor in office, shall be entitled to recover the same from the defaulting member. Any moneys so recovered shall be held in trust for and deposited in the clearing bank for the benefit of the members entitled thereto.

15. *Re-Adjustment of Balances.*

(a) If a member neglects or refuses to pay its debit balance to the clearing bank, and if such default be made not because of inability to pay, the Board of Management may direct that the exchanges for the day between the defaulting member and each of the other members be eliminated from the Clearing House statements, and that the settlements upon such exchanges be made directly between the members interested, and not through the Clearing House. Upon such direction being given, the Clearing House Manager shall comply therewith and adjust the settlement of balances anew, and the settlements of the exchanges so eliminated shall thereupon be made directly between the members interested.

(b) If the representatives of any member fail to appear within five minutes after the specified time appointed for clearing, the said member shall be excluded from the exchanges of the day, and must make its clearings at the counters of the other members.

16. *Suspension of Clearings.*

Should any case arise to which, in the opinion of the Board of Management, the foregoing rules are inapplicable, or in which their operation would be inequitable, the said Board of Management shall have power at any time to suspend the clearings and settlements of the day; but immediately upon such suspension the Board shall call a meeting of the members of the Clearing House to take such measures as may be necessary.

17. *By-Laws.*

Every Clearing House now existing, or that may hereafter be established, may enact (at a meeting of its members called for that purpose) by-laws, rules and regulations for the government of its members, not inconsistent with these rules, and may fix therein among other things:

1. The name of the Clearing House.
2. The number of members of the Board of Management and the quorum thereof.
3. The date, time and place for the Annual Meeting of the members.
4. The hours for making exchanges, and for the payment of the balances to or by the clearing bank.
5. The manner in which cash is to be cleared.
6. Proper matter for clearings except as provided by these rules.

Any by-law, rule, or regulation passed or adopted under this clause may be amended at any meeting of the members, provided that not less than two weeks' notice of such meeting, and of the proposed amendment or amendments, has been given.

18. *Expulsion of Members.*

Any member may be expelled from the Clearing House and debarred from the privileges thereof on a two-thirds vote of the members at a special general meeting.

19. *Non-Members.*

(a) No member of any Clearing House shall make exchanges through the Clearing House for any bank or other institution whose exchanges have not heretofore been so made through a member, until the making of such exchanges by a member shall have been approved by the Board of Management.

(b) The consent of the Board of Management shall also be necessary to the transfer of the making of exchanges for a non-member from one member to another member.

(c) Every non-member bank or institution sending its exchanges through a member shall pay to the Clearing House an amount satisfactory to the Board of Management.

(d) Whenever any member of the Clearing House shall present through the Clearing House the exchanges of any bank or other institution not members such presentment shall *ipso facto*, and without other notice, constitute the said member the agent for the said bank or other institution at the Clearing House; and the said member shall be liable in the premises the same as for its own transactions, and its liability in all such cases shall continue until after the completion of the exchanges of the morning next following the receipt of notice of discontinuance of any such agency.

(e) During the hours of clearing no one shall be admitted into the Clearing House except the Manager or person acting as Manager, the representatives of the members forming the Clearing House, officers of the Canadian Bankers' Association, members of the Board of Management, and the constable on duty, unless introduced by a member who shall be liable for such introduction.

(f) At the hour appointed for making exchanges at the Clearing House, as soon as the bell is rung by the Manager, the door must be locked and no one admitted during the time that parcels are being distributed and no exchange shall be made from one member to another previous to the signal given to commence the work of clearing.

20. *Medium of Payment.*

The mode or medium, in which balances are to be paid, is to be regulated from time to time by the Canadian Bankers' Association.

21. *Information for Publication.*

No officer of any Clearing House or of any member shall furnish or cause to be printed in any newspaper or other publication or shall furnish any party or parties, except the Canadian Bankers' Association, any information in connection with any Clearing House, except the aggregate daily, weekly, monthly, and yearly returns and such information as he may be authorized by the Board of Management to impart.

22. *Cheques on City Branches.*

The following rule has been recommended by the Canadian Bankers' Association, but any Clearing House is at liberty to substitute therefor any rule dealing with the same subject matter which it thinks fit.

(a) Cheques received by a Bank through the Clearing House, drawn upon its City branches, or any other than the main office, must be presented at the branch on which drawn within a reasonable time, having regard to the provisions of Section 86 of the Bills of Exchange Act, in any event not later than the following banking day, and if dishonoured must be protested by a Notary on the day of presentation, unless accompanied by written or endorsed instructions not to protest.

(b) The Board of Management shall determine what branches are to come under the operation of this rule.

23. *Clearing House Parcels.*

All parcels and envelopes are to be sealed with wax and shall bear thereon the names of the sending and receiving members, respectively, otherwise they shall not be accepted.

24. *Matter for Clearings.*

(a) No returned item or items in dispute shall be placed in the parcels, unless notice thereof be previously given and agreed to.

(b) All unaccepted and unmarked bills of exchange, except cheques, unstamped and illegally endorsed items; shall be considered improper matter for clearings. Unaccepted bills of exchange, for the purposes of this section, shall mean bills of exchange that have not been accepted by the drawee.

(c) Bonds and Coupons cannot be collected through the exchanges, but must be presented over the counter to the paying member.

(d) Any items specially agreed to by any member, or institution clearing through it, until notice is given to the contrary, shall be considered proper matter for clearing.

(e) The enclosing by a member in Clearing House parcels of branch settlement drafts payable to, and dishonoured cheques and bills of exchange intended for, a suburban or city branch of any other member, is absolutely forbidden.

25. *Canadian Bankers' Association Money Orders.*

In the issuance of Canadian Bankers' Association Money Orders no responsibility will be attached to the issuing bank in respect of the signatures of the payees or endorsers.

26. CONVENTIONS AND RULES RESPECTING ENDORSEMENTS.

(a) An endorsement may be either written or stamped in whole or in part.

(b) A regular endorsement within the meaning of these Conventions and Rules must be neither restrictive nor conditional, and must be so placed and worded as to show clearly that an endorsement is intended.

If purporting to be the endorsement of the person or firm to whom the item is payable (whether originally or by endorsement), the names must correspond, subject, however, to section 64 of the Bills of Exchange Act, which is as follows:

> "Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature."

If purporting to be the endorsement of a corporation, the name of the corporation and the official position of the person or persons signing for it, must be stated.

If purporting to be made by some one on behalf of the endorser, it must indicate by words that the person signing has been authorized to sign: ex gr., "John Smith, by his attorney, Thomas Robinson," or "Brown, Jones & Co., by Thomas Robinson, their attorney, or Per Pro. or P. P. the Smith Brown Company Limited, Thomas Robinson."

(c) An endorsement other than a restrictive endorsement, which is not in accordance with the foregoing definition of a regular endorsement, or which is so placed or worded as to raise doubts whether it is intended as an endorsement, is an irregular endorsement within the meaning of these Conventions and Rules.

(d) Section 68, subsection 2 of the Bills of Exchange Act defines a restrictive endorsement as follows:

"An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'pay D only,' or 'pay D for the account of X,' or 'pay D, or order, for collection.'"

The following further examples shall be treated as restrictive endorsements within the meaning of these Conventions and Rules, without prejudice, however, to their true character should the question arise in court, viz.:

"For deposit only to the credit of ...."

"For deposit in .... bank to credit of

............................"

"Deposited in .... bank for account of

......................."

"Credit .... bank."

(e) All items cleared, except bank notes, shall bear the stamp of the depositing member whether the bank is the original payee or not. Such stamp shall clearly indicate the name of the member and *date of clearance*, and shall for all purposes be the endorsement of the depositing member, and except as hereinafter specified, no further or other endorsement shall be required.

The endorsement on all items cleared by a suburban branch of a member shall be equivalent to the endorsement of the depositing member. Such endorsement shall contain the name of the member, its branch or agency, and *date of clearance* by the presenting member.

(f) In the case of all items, whether restrictively, irregularly, or conditionally endorsed, sent through the exchanges by members of the Clearing House, the stamp of the member sending the item shall be deemed and held as guaranteeing the authenticity of all endorsements thereon, even if such guarantee be not express. By virtue of such guarantee and of these conventions and rules the member so bound shall return to the paying member the amount of the item so guaranteed, if, owing to the nature of any endorsement, or to its being forged, or unauthorized, it should appear that such payment was improperly made. The said stamp, however, shall not be construed as supplying or guaranteeing to supply a missing endorsement.

(g) When a letter of credit, deposit receipt, or other item not negotiable, and to which the provisions of the Bills of Exchange Act do not apply, is deposited or presented, a receipt and indemnity in the following form, or to the like effect, shall be written or stamped thereon, signed in writing by an authorized officer of the presenting or depositing member, viz.:

> "Received amount of within from the within named bank, which is hereby indemnified against all claims hereunder by any person."

(h) While it is understood that in general, for convenience of the depositing or presenting member, no objection will be made to a restrictive endorsement, or to an irregular endorsement, particularly by reason of subsection (f) hereof, yet in view of the responsibility which a depositing or presenting member incurs in connection therewith, each member shall undertake to make all reasonable efforts to have all endorsements on items deposited or presented by it made regular in order that its customers and the public generally may ultimately be led to adopt a regular and uniform system.

It is also understood that endorsements regularly made within the meaning of these Conventions and Rules shall not be objected to except for special reasons to be assigned with the objection.

5 GEORGE V.

CHAP. 1.

An Act to amend The Bank Act.

[*Assented to 8th April, 1915.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. *The Bank Act*, chapter 9 of the statutes of 1913, is amended by inserting immediately after subsection 7 of section 88 the following subsections:—

Loans for the Purchase of Seed Grain.

"8. The bank may lend money to the owner, tenant or occupier of land for the purchase of seed grain upon the security of any crop to be grown from such seed grain.

Form of Security.

"9. The security may be taken in the form set forth in Schedule G to this Act or in a form to the like effect.

Lien.

"10. The bank shall by virtue of such security acquire a first and preferential lien and claim for the sum secured and interest thereon upon the seed grain purchased and the crop covered by the security, as well before as after the severance of the crop from the soil, and upon the grain threshed therefrom. and the bank shall by virtue of such security acquire the same rights and powers in respect of such seed grain and of the grain so threshed as if it had acquired such rights and powers by virtue of a warehouse receipt

Rights in Case of Default.

"11. The bank shall have the right, through its servants or agents, in case of default in payment of the money lent or in case of neglect to care for and harvest the crop, or in case of any attempt to dispose of the crop without the consent of the bank, or in case of the seizure of the crop under process of law, to enter upon the land upon which the crop is grown, to take possession of, care for and harvest the crop and thresh the grain therefrom.

"12. Money lent under subsection 8 of this section to be entitled to the security therein referred to must be lent not later than the first day of August, 1915."

(Subsection 12 repealed by sec. 1 of 6-7 Geo. V. c. 10.)

2. This Act shall be deemed to have come into force on the fifteenth day of March, 1915.

SCHEDULE G.

In consideration of an advance of dollars made by the Bank to A. B., for which the said bank holds the following bills or notes: (*describe the bills or notes, if any*) [*or*, In consideration of the discounting of the following bills or notes by the Bank for A. B.: (*describe the bills or notes*)] and inasmuch as the said advance [*or* the said discounting, *as the case may be*] was made on the representation that seed grain would be purchased with the advance [*or* proceeds of the discounting, *as the case may be*] and would be sown upon land in the province of situate and being the seed grain purchased and the crop grown from the grain so sown upon the land aforesaid and the grain threshed therefrom are hereby assigned to the said bank as security for the payment, on or before the day of , of the said advance, together with interest at the rate of per cent. per annum from the day of [*or*, of the said bills or notes, or renewals thereof, or substitutions therefor, and interest thereon, *as the case may be*].

This security is given under the provisions of subsections 8 to 12, inclusive, of section 88 of the *Bank Act* and is subject o the provisions of the said Act.

Dated at

6-7 GEORGE V.

CHAP. 10.

An Act to amend The Bank Act.

[*Assented to 18th May, 1916.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Subsection twelve of section eighty-eight of the *Bank Act*, as enacted by section one of chapter one of the statutes of 1915, is repealed.

2. Section eighty-eight of the *Bank Act* is further amended by adding thereto the following subsections:—

Loans upon Security of Live Stock.

"12. The bank may lend money to a farmer and to any person engaged in stock raising upon the security of his live stock. "Live stock," for the purposes of this subsection and of subsections thirteen to twenty, both inclusive, means horses and mares, bulls, cows, oxen, bullocks, steers, heifers and calves, sheep and swine and the offspring of any of such animals.

Security.

"13. The security may, in the province in which the live stock are and in which statutes or ordinances are in force relating to bills of sale and chattel mortgages, or either of them, be taken in the form of a bill of sale or chattel mortgage, as the case may be, valid and lawful according to the laws in force in the province.

Registration.

"14. Such bill of sale or chattel mortgage shall in accordance with the said statutes or ordinances be filed or registered, as the case may be, together with or accompanied by the proper affidavit or affidavits called for in that behalf by the said statutes or ordinances.

Application of Provincial Law.

"15. Such bill of sale or chattel mortgage, and the taking of such security, and the respective rights and privileges of the bank on the one hand and the grantor or mortgagor on the other shall be subject to the provisions of the said statutes or ordinances and to all other laws affecting bills of sale or chattel mortgages and the terms and conditions thereof in force in the province in which the live stock mentioned in the bill of sale or chattel mortgage are.

"16. In any province in which there are no statutes or ordinances in force relating to bills of sale or chattel mortgages, and to their filing or registration, then in such case the security may, as respects live stock which are in that province, be taken in the form ' H" in the Schedule to this Act or in a form to the like effect.

"17. A memorandum of the security taken in the form "H" shall be published in the official Gazette of the province referred to in subsection sixteen next preceding, within thirty days after the execution thereof, and if such memorandum is not so published the security so taken shall, as against creditors of the grantor, and as against subsequent purchasers in good faith for valuable consideration, be null and void.

"18. Such memorandum shall be in the form "I" in the Schedule to this Act, or to the like effect.

Rights of Bank in Case of Default.

"**19.** The bank shall by virtue of the security taken under subsection sixteen of this section have full power, right and authority, if the bills or notes therein mentioned or described or any of them are not paid according to their tenor, to enter upon the premises upon which the live stock mentioned in the security are, to take possession of or seize such live stock, and before or after such taking possession of or seizure, to sell such live stock, or such part thereof as may be necessary to realize the amount due and payable, at public auction, not less than five days after,—

(*a*) notice of the time and place of such sale has appeared in a newspaper published in or nearest to the place where the sale is to be made, and

(*b*) posting a notice in writing or in print of the time and place of such sale in or at the post office nearest to the place where the sale is to be made.

" 20. After all necessary and reasonable expenses in connection with such seizure and sale have been deducted and prior privileges, liens or pledges existing in favour of third parties and for which claims may have been filed with the party making the sale have been satisfied, the balance of the proceeds of the sale shall be applied in payment of the said bills or notes and the surplus if any returned to the grantor."

SCHEDULE—FORM H.

In consideration of an advance of dollars, made by the Bank to A. B. for which the said Bank holds the following bills or notes (*describe the bills or notes, if any*) [*or*, in consideration of the discounting of the following bills or notes by the

Bank for A. B. (*describe the bills or notes*)], and, inasmuch as the said advance (*or* the said discounting, *as the case may be*) is made upon the security of the following live stock:

the said live stock are hereby assigned to the said Bank as security for the payment, on or before the day of of the said advance together with interest at the rate of per centum per annum from the day of (*or*, of the said bills or notes or renewals thereof or substitutions therefor, and interest thereon, *as the case may be*).

This security is given under the provisions of subsections twelve and sixteen of section eighty-eight of *The Bank Act*, and is subject to the provisions of the said Act.

Dated at

Form I.

Public notice is hereby given that security under subsections twelve and sixteen of section eighty-eight of *The Bank Act* was given on the day of by of to the Bank of for the sum of payable, with interest at the rate of per cent. per annum, on the day of on the security of (*here describe live stock*).

Signed

for the Bank of

8-9 GEORGE V.

CHAP. 9.

An Act to amend the Bills of Exchange Act.

[*Assented to 24th May, 1918.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section one hundred and twenty-one, paragraph (*b*), of the *Bills of Exchange Act*, Revised Statutes of Canada, 1906, chapter one hundred and nineteen, is amended by substituting for the words "three o'clock" in the last line of the said paragraph the words "half-past two o'clock."'

2. This Act shall remain in force during the present war and for one year thereafter.

THE SPECIAL WAR REVENUE ACT, 1915.

5 George V., cap 8.

As amended by 10-11 Geo. V., c. 71.

Sections Relating to Banks and Banking.

Bank Note Circulation.

3. Each bank to which *The Bank Act* applies, exclusive of banks in course of winding-up, shall pay to the Minister of Finance for the Consolidated Revenue Fund, on the first day of February, the first day of May, the first day of August and the first day of November in each year, a tax equal to one-fourth of

one per cent. upon the average amount of the notes of the bank as hereinafter limited in circulation during the three months ending respectively on the last day of December, the last day of March, the last day of June and the last day of September preceding.

(2) In calculating the average amount of notes in circulation for the purposes of the last preceding subsection, the greatest amount of notes in circulation at any time during each of the three months, as shown by the monthly return made by the bank under section 112 of *The Bank Act*, shall be taken as the basis for such average.

(3) If the greatest amount of notes so shown exceeds the paid-up capital of the bank, then in such case an amount equal to the paid-up capital shall be taken as the basis to be used in calculating the average. 5 Geo. V., cap. 8.

Stamp Duties on Bills of Exchange, Cheques, Promissory Notes, etc.

12. In this section, unless the context otherwise requires,—
  (a) "bank" means,—
    (i) a bank to which the provisions of *The Bank Act* applies;
    (ii) a bank subject to the provisions of *The Quebec Savings Banks Act*, 1913.
    (iii) Any other body corporate receiving money which it repays by honouring the cheques of the person from or on whose account the money was received;
    (iv) any one receiving money which he repays by honouring the cheques of the person from or on whose account the money was received;
  (b) "bill of exchange" includes an instrument in the form of a bill in which the drawer and drawee are the same person;
  (c) "promissory note" does not include notes of a bank payable to bearer on demand and intended for circulation.

Stamp Tax on Cheques.

2. No person shall issue a cheque payable at or by a bank unless there is affixed thereto an adhesive stamp or unless there is impressed thereon by means of a die a stamp of the value of two cents, and every adhesive stamp affixed to a cheque shall be cancelled by the bank at which the cheque is payable at or before the time of payment.

Stamp Tax on Bills and Notes.

3. (a) Subject to the provisions hereinafter set out no person shall transfer a bill of exchange or promissory note to a bank in

such manner as to constitute the bank the holder thereof, or deliver a bill of exchange or promissory note to a bank for collection, unless there is affixed thereto an adhesive stamp or unless there is impressed thereon by means of a die a stamp of the value of, if the amount of the money for which the bill or note is drawn or made

(i) does not exceed $100.00 .... two cents,
(ii) exceeds $100.00, for every $100.00 or fraction thereof .... two cents.

(b) If a bill of exchange, transferred or delivered to a bank or issued by a bank is payable on demand, or at sight, or on presentation, or within three days after date or sight, such bill shall, for the purpose of the value of the stamp to be affixed thereto or impressed thereon, be deemed to be drawn for an amount not exceeding one hundred dollars.

(c) Whenever a promissory note, payable on demand, is transferred or delivered to a bank in such manner as to constitute the bank the holder, for an advance made or to be made by the bank, a stamp of the value of two cents only is required to be affixed to the note or impressed thereon, whatever the amount of the money for which the note is made. The bank shall quarterly, on the last day of March, the last day of June, the last day of September, and the last day of December in each year, or within five days thereafter, prepare a statement showing the maximum amount of the advances made to the person transferring or delivering such notes, outstanding at the close of business on any day during the period of three months, or portion of such period then ending, in respect of notes payable on demand, and shall affix thereto, at the time the statement is prepared, a stamp or stamps of the value of two cents for every one hundred dollars or fraction thereof by which the maximum amount of the advances as aforesaid exceeds one hundred dollars; and the bank shall forthwith render such statement to the person to whom the advances were made and the amount of the stamps so affixed shall forthwith be payable by such person to the bank.

Stamp Tax on Promises to Pay, or Pledge of Securities.

(d) Whenever a document or writing is given or delivered to a bank in respect of an advance made or to be made by the bank to the person giving or delivering the document or writing and containing a promise to pay any sum of money advanced pursuant thereto, or containing a pledge of securities to secure the payment of any advance, and no promissory note or bill of exchange in respect of such advance is transferred or delivered to the bank, the following provision shall apply:

The bank shall, quarterly, on the last day of March, the last day of June, the last day of September and the last day of December in each year, or within five days thereafter, prepare a statement showing the maximum amount of the advances made to the person giving or delivering such document or writing outstanding at the close of business on any day during the period of three months, or portion of such period, then ending, in respect of such document or documents, and shall affix thereto, at the time the statement is prepared, a stamp or stamps of the value of two cents for every one hundred dollars of such maximum advances, or fraction thereof; and the bank shall forthwith render such statement to the person to whom the advances were made and the amount of the stamps so affixed shall forthwith be payable by such person to the bank.

(e) If the person to whom an advance is made as mentioned in either of the next preceding paragraphs (c) and (d) closes the account in respect of such advances at any time during a quarterly period, or if such account becomes payable at any time during a quarterly period, such statement shall be rendered forthwith, and the maximum amount of the advances made to the person outstanding at the close of business on any day in either case during the portion of such period, shall determine the value as aforesaid of the stamps to be affixed to the statement.

Stamp Tax on Overdrafts.

(f) Whenever an advance is made by a bank to a person by way of overdraft the bank shall on the last day of each month or within five days thereafter, prepare a statement showing the maximum amount of the overdraft outstanding at the close of business on any day during the month, and shall affix to the statement a stamp or stamps of the value of two cents for every one hundred dollars or fraction thereof of such maximum amount, and the bank shall forthwith render such statement to the person to whom the advances were made and the amount of the stamps so affixed shall forthwith be payable by such person to the bank. An overdraft to be taken into account for the purposes of the statement and the value of the stamps to be affixed, shall not be deemed to be outstanding until the fourth day on which the account is overdrawn.

(g) If the person to whom an advance is made, as mentioned in the next preceding paragraph, closes the account at any time during a month, or if the account becomes payable at any time during a month, the statement mentioned in such paragraph shall be rendered forthwith, the maximum amount of the advances made to the person outstanding at the close of business on any day during the portion of such month shall determine the value of the stamps to be affixed as aforesaid to the statement.

Cancellation of Stamps by Bank.

(h) Every adhesive stamp affixed to a bill of exchange or promissory note, transferred or delivered or issued in the manner hereinbefore set forth, or affixed to a statement to be rendered as hereinbefore set forth, shall be cancelled by the bank at the time of transfer, delivery, issue or rendering.

Stamp Tax on Bank Cheques, etc.

4. No person shall sign a receipt for money paid to him by a bank chargeable against a deposit of money in the bank to his credit until he has affixed to the receipt an adhesive stamp or unless there is impressed thereon by means of a die a stamp of the value of two cents, and every adhesive stamp affixed to such receipt shall be cancelled by the bank at the time the money is paid.

5. No cheque or other bill of exchange shall be issued or paid by a bank unless there is affixed thereto an adhesive stamp or impressed thereon by means of a die a stamp or stamps of the requisite value according to the requirements of this section.

Stamp Tax on Notes, Cheques and Bills Made out of Canada.

6. Every bank having in possession in Canada any promissory note, cheque or other bill of exchange made or drawn out of Canada on which a stamp prepared for the purposes of this Part or authorized to be used in lieu thereof has not been affixed or impressed shall before payment or presentment for acceptance or payment, if the same is payable in Canada, affix thereto an adhesive stamp of the requisite value according to the requirements of this section, and the value of the stamp so affixed shall be payable to the bank by the person entitled to the proceeds of the note, cheque or bill. The bank shall, before payment or presentment for acceptance or payment, if the stamp is affixed by the bank, cancel the stamp.

Issue of Cheque without Stamp—Penalty.

7. Every person who issues a cheque payable at or by a bank to which there is not affixed an adhesive stamp or on which there is not impressed by means of a die a stamp of the value of two cents shall be liable to a penalty not exceeding fifty dollars.

Transfer or Delivery of Bill or Note without Stamp—Penalty.

8. Every person who—

(a) transfers a bill of exchange or promissory note to a bank in such manner as to constitute the bank the holder thereof; or,

(b) delivers a bill of exchange or promissory note to a bank for collection;

to which there is not affixed an adhesive stamp or on which there is not impressed by means of a die a stamp of the requisite value according to the requirements of this section shall be liable to a penalty not exceeding fifty dollars.

Receipt for Money Paid by Bank without Stamp—Penalty.

9. Every person who signs a receipt for money paid to him by a bank chargeable against a deposit of money in the bank to his credit to which there is not affixed an adhesive stamp or on which there is not impressed by means of a die a stamp of the value of two cents shall be liable to a penalty not exceeding fifty dollars.

Issue of Bank Cheques without Stamp—Penalty.

10. Every bank which issues, pays, presents for acceptance or payment or accepts payment of a cheque or other bill of exchange or promissory note upon which a stamp of the requisite value according to the requirements of this section has not been affixed or impressed shall be liable to a penalty of one hundred dollars.

Penalty for Failure of Bank to Prepare Statement.

(a) Every bank which omits or neglects to prepare a statement as and within the time called for by the provisions of this section, and to affix thereto a stamp or stamps of the requisite value according to the requirements of this section, shall be liable to a penalty equal to the amount of the stamps required to be affixed and a further penalty of five hundred dollars.

Penalty for Omission of Bank to Cancel Stamps on Cheques, etc.

11. Every bank which omits or neglects to cancel, in accordance with the requirements of this section, the adhesive stamp or stamps affixed to

(a) a cheque,
(b) a bill of exchange or promissory note,
(c) a receipt for money,
(d) a statement,

shall be liable to a penalty equal to the amount of the uncancelled stamps and a further penalty of one hundred dollars.

Bank Taking Receipt Without Stamp—Penalty.

12. Every bank which takes or accepts a receipt for money paid by the bank chargeable against a deposit of money at the credit of the person signing the receipt on which a stamp of the value required by this section has not been affixed or impressed shall be liable to a penalty of one hundred dollars.

Stamp Tax on Sale or Transfer of Stock—Penalty for Violation.

13. No person shall sell or transfer the stock or shares of any association, company or corporation, by agreement for sale, entry on the books of the association, company or corporation, by delivery of share certificates or share warrants endorsed in

blank, or in any other manner whatsoever, or accept the transfer or delivery of any stock or share unless in respect of such sale or transfer there is affixed to or impressed upon the document evidencing the ownership of such stock or shares, or a document showing the transfer or agreement to transfer thereof, an adhesive stamp, or a stamp impressed thereon by means of a die of the value of two cents for every one hundred dollars or fraction thereof of the par value of the stock or shares sold or transferred. Provided that in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed or impressed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed or impressed upon the certificate; and in case of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed or impressed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Provided that the first delivery by a corporation or company of such shares, or debenture stock, in order to effect an issue, shall not be subject to the tax imposed by this subsection.

Any person who violates any of the provisions of this subsection shall be liable to a penalty not exceeding five hundred dollars. 5 Geo. V. c. 8; 10-11 Geo. V. c. 71. Am.

Stamps to be Used and Methods of Cancellation.

19. The Minister, except as herein otherwise provided, may direct stamps to be prepared for the purposes of this Part of such kinds and bearing respectively such devices as he thinks proper, and all sums received for stamps and paper stamped by means of a die under this Part shall form part of the Consolidated Revenue Fund.

(2) The device on each stamp shall express the value thereof, that is to say the sum at which it shall be reckoned in discharge of the obligation to affix or impress stamps under this Part.

(3) Postage stamps of the requisite value may, in lieu of stamps prepared under subsection 1 of this section, be used in fulfilment and discharge of any requirement under this Part that adhesive stamps be affixed.

(4) In any case in which an adhesive stamp is required to be cancelled, and it is not otherwise specifically provided, such stamp shall be deemed to be cancelled if lines or marks are drawn across or impressed thereon so as to effectually render the stamp incapable of being used for any other instrument.

THE BANKRUPTCY ACT.

Sections from 9-10 Geo. V. c. 36, as amended.

Acts of Bankruptcy.

3. A debtor commits an act of bankruptcy in each of the following cases:—

Fraudulent Conveyance.

(b) If in Canada or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

Fraudulent Preference.

(*c*) If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this Act be void as a fraudulent preference if he were adjudged bankrupt;

Property not to be removed from Province.

26. (1) No property of an estate of a bankrupt or of an authorized assignor shall be removed out of the province where such property was at the date when any receiving order or authorized assignment was made, without the consent in writing of the inspectors or the order of the court in which proceedings under this Act are being carried on or within the jurisdiction of which such property is situate.

Moneys to be deposited in Bank.

(2) The trustee shall deposit in a chartered bank the proceeds of the sale of any property of the estate of the bankrupt or the authorized assignor and all other moneys realized on account of any trust estate which he is administering under this Act and he shall not withdraw or remove therefrom, without the consent in writing of the inspectors or the order of the court, any such moneys, except for payment of dividends and other charges incidental to the administration of the estate.

Not into Private account of Trustee.

(3) No trustee in a bankruptcy or under any authorized assignment or composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Continuance of Business by Trustee.

27. If the trustee is directed to continue the business of a debtor he may incur obligations and make necessary or advisable

advances, which obligations and advances so incurred or made shall be discharged or repaid to the trustee out of the assets of the debtor in priority to the claims of the creditors. Provided that,—

(a) the creditors or inspectors may by resolution limit the amount of the obligations or advances which may be made or paid by the trustee in the continuance of the business or the period of time for the continuance of the business; and,

(b) the trustee shall not be under obligation to continue the business if in his opinion the realizable value of the assets of the debtor is insufficient to fully protect him against possible loss from so doing, and if the creditors, upon demand made by the trustee, neglect or refuse to secure him against such possible loss.

Set-off.

28. (1) The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the trustee for the recovery of debts due to the debtor in the same manner and to the same extent as if the debtor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this Act respecting frauds or fraudulent preferences.

(2) If any debtor who has made an authorized assignment or against whom a receiving order has been made, owes or owed debts both individually and as a member of one or more different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.

Avoidance of Assignment of Book Debts.

30. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts, or any class or part thereof, and is subsequently adjudicated bankrupt or makes an authorized assignment, the assignment of book debts shall be void against the trustee in the bankruptcy, or under the authorized assignment, as regards any book debts which have not been paid at the date of the petition in bankruptcy or of the authorized assignment, unless there has been compliance with the provisions of any statute which now is or at any time hereafter may be in force in the province wherein such person resides or is engaged in said trade or business as to registration, notice and publication of such assignments. Provided that nothing in this section shall have effect so as to render void any assignment of book debts, due at the date of the assignment from specified debtors, or of debts growing due

under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any authorized assignment.

(2) For the purposes of this section "assignment" includes assignment by way of security and other charges on book debts.

Dealings with Undischarged Bankrupt.

34. (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property whether real or personal, acquired by the bankrupt after the making of a receiving order shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. For the purposes of this subsection, the receipt of any money, security, or negotiable instrument, from or by the order or direction of a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the Court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

Dividends on Separate Property of Bankrupt Partner—

37. (4) Where one partner of a firm is adjudged bankrupt, or makes an authorized assignment, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt or authorized assignor until all the separate creditors have received the full amount of their respective debts.

Debts Provable.

44. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy or in proceedings under an authorized assignment.

(2) Save as aforesaid, all debts and liabilities, present or future, to which the debtor is subject at the date of the receiving order or the making of the authorized assignment or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order or of the making of the authorized assignment, shall be deemed to be debts provable in bankruptcy or in proceedings under an authorized assignment.

(3) The court shall value, at the time and in the summary manner prescribed by General Rules, all contingent claims and all such claims for unliquidated damages as are authorized by this section, and after, but not before, such valuation, every such claim shall for all purposes of this Act, be deemed a proved debt to the amount of its valuation.

Proof of Debts.

45. (1) Every creditor shall prove his debt as soon as may be after the making of a receiving order or after the date of an authorized assignment.

(2) A debt may be proved by delivering or sending through the post in a prepaid and registered letter to the trustee, a statutory dclaration verifying the debt.

(3) The statutory declaration may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

(4) The statutory declaration shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The trustee may at any time call for the production of the vouchers.

(5) The statutory declaration shall state whether the creditor is or is not a secured creditor.

(6) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

Proof by Secured Creditors.

46. (1) If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. (Eng. Sch. 2 No. 10.)

(2) If a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove for his whole debt. (Eng. Sch. 2 No. 11.)

(3) If a secured creditor does not either realize or surrender his security, he shall within thirty days of the date of the receiving order, or of the making of the authorized assignment, or within such further time as may be allowed by the inspectors, or in case they shall refuse, then within such further time as may be allowed by the court, file with the trustee a statutory declaration stating therein full particulars of his security or securities, the date when each security was given, and the value at which he assesses each thereof. He shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(5) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(6) Notwithstanding subsections four and five of this section the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within one month after receiving the notice or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

(7) Where a security has been realized as provided by this section, the net amount realized shall be paid to the secured creditor and shall be substituted for the amount at which he valued such security in his claim and shall be treated in all respects as an amended valuation by the secured creditor. The costs and expenses of any such sale shall be in the discretion of the court.

(8) If the trustee has not elected to acquire the security as hereinbefore provided, a creditor may at any time within two months after filing his claim amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

(9) Where a valuation has been amended in accordance with the foregoing subsection, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

(10) If a secured creditor does not comply with the foregoing subsections he shall be excluded from all share in any dividend.

(11) Subject to the provisions of subsections five and six of this section, a creditor shall in no case receive more than one hundred cents in the dollar and interest as provided by this Act.

Proof in Respect of Distinct Contracts.

47. If a debtor was, at the date of the receiving order or authorized assignment, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Interest.

49. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order or authorized assignment and provable under this Act, the creditor may prove for interest at a rate not exceeding six per cent. per annum to the date of the order or authorized assignment from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debts Payable at a Future Time.

50. A creditor may prove for a debt not payable at the date of the receiving order or of the authorized assignment as if it were payable presently and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest

at the rate of six per cent. per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Partners and Separate Estates.

51. (3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate." 9-10 Geo. V. c. 36; 10-11 Geo. V. c. 34. Am.

Rights of Banks.

88. Nothing in the provisions of this Act shall interfere with, or restrict the rights and privileges conferred on banks and banking corporations by *The Bank Act.*

THE COMPANIES ACT.

(Sections from chap. 79 R. S. C. 1906, as amended.)

Borrowing Powers—Authority.

69. If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time,—

(a) borrow money upon the credit of the company;

(b) limit or increase the amount to be borrowed;

(c) issue bonds, debentures, debenture stock or other securities of the company, and pledge or sell the same for such sums and at such prices as may be deemed expedient;

(d) hypothecate, mortgage or pledge the real or personal property of the company, or both, to secure any such bonds, debentures, debenture stock or other securities, and any money borrowed for the purposes of the company.

2. Nothing in this section contained shall limit or restrict the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company.

When Debentures Deposited not Redeemed.

4. (b). Where a company has, either before or after the passing of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4-5 Geo. V. c. 23, s. 3.

Signature of Company.

115. Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name with the word *limited* after it, is not engraven in legible characters; or,—

(a) issues, or authorizes the issue of any notice, advertisement or other official publication or such company; or,
(b) signs or authorizes to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods; or,
(c) issues or authorizes to be issued any bill of parcels, invoice or receipt of the company;

wherein its name, with the said word after it, is not mentioned in legible characters, shall incur a penalty of two hundred dollars, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company. 2 E. VII., c. 15, s. 25.

Contracts by Agents or Officers.

160. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company.

(2) In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order.

3. The person so acting as agent, officer or servant of the company, shall not be thereby subjected individually to any liability whatsoever to any third person therefor. R. S., c. 118, s. 35.

THE FINANCE ACT, 1914.

5 George V., chap. 3.

AN ACT TO CONSERVE THE COMMERCIAL AND FINANCIAL INTERESTS OF CANADA.

[*Assented to 22nd August, 1914.*]

Whereas for the purpose set forth in an order in council of the third day of August, 1914, advances to the chartered banks in the form of an issue of Dominion notes, were authorized to be made against deposits by the banks with the Minister of Finance of such securities as might be approved by the Minister, such advances to be repayable not later than the first day of May, 1915, with interest at a rate, to be approved by the Minister, not less than five per cent. per annum; and whereas under the authority of an order in council of the same date, the chartered banks were authorized to make payment in bank notes instead of gold or Dominion notes until further official announcement in that behalf, and were also authorized to issue from the date of the said order in council, and until further announcement, excess circulation to amounts not exceeding fifteen per cent. of the combined unimpaired capital and rest or reserve fund of the respective banks, as stated in their respective statutory monthly returns to the Minister for the month immediately preceding that in which the additional amount is issued; and whereas under authority of an order in council dated the tenth day of August, A.D. 1914, the redeeming in specie of Dominion notes was suspended; and whereas it is expedient that the said orders in council be confirmed: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Finance Act, 1914.*

2. In this Act, unless the context otherwise requires,

(a) "Minister" means the Minister of Finance;

(b) "excess circulation" means the amount of the notes of a bank in circulation in excess of the amount of the notes of that bank which may be issued pursuant to subsections 1 and 3 of section 61 of *The Bank Act.*

3. The issue of Dominion notes, and all things done under the provisions of the orders in council cited in the preamble, are hereby confirmed and shall be deemed to have been duly authorized, and the said orders in council shall continue in force until the fifteenth day of September, 1914: Provided always that the Governor in Council may at any time by a proclamation published in *The Canada Gazette* revoke the said orders in council, or any of them, or any of the provisions in the said orders contained, but such revocation shall not affect the previ-

ous operation of any such order or anything duly done thereunder, or affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder.

4. In case of war, invasion, riot or insurrection, real or apprehended, and in case of any real or apprehended financial crisis, the Governor in Council may, by proclamation published in *The Canada Gazette*,—

(a) authorize the making of advances to the chartered banks and to the savings banks to which *The Quebec Savings Banks Act, 1913*, applies, by the issue of Dominion notes upon the pledge of securities, deposited with the Minister, of such kind and amount as may be approved by the Treasury Board; such advances to be repayable at such times as the Board may determine with interest at a rate likewise determined by the Board of not less than five per cent. per annum;

(b) authorize the chartered banks to make payments in the bank notes issued by such banks instead of in gold or Dominion notes, but the total amount of the notes of any chartered bank in circulation at any time shall not exceed the amount of its notes issuable under the provisions of *The Bank Act* and of clause (c) of this subsection;

(c) authorize the several chartered banks to issue excess circulation, from and including the first day of March in any year, to and including the last day of August next ensuing, or during any part of such period, to amounts not exceeding fifteen per cent. of the combined unimpaired capital and rest or reserve fund of the respective banks, as stated in their respective statutory monthly returns to the Minister for the month immediately preceding that in which the additional amount is issued;

(d) suspend the redemption in gold of Dominion notes; and

(e) authorize, in so far as the same may be within the legislative authority of the Parliament of Canada, the postponement of the payment of all or any debts, liabilities and obligations however arising, to such extent, for such time and upon and subject to such terms, conditions, limitations and provisions as may be specified in the proclamation.

(2) The securities deposited with the Minister under this section shall, as respects the Dominion notes issued hereunder, be deemed to be the security required to be held by the Minister under section 5 of *The Dominion Notes Act, 1914*.

(3) A tender by a bank of its notes in payment of any of its liabilities, when a proclamation made under clause (b) of the first subsection of this section is in force, shall be a sufficient and valid tender, and the payment at such time by a bank of any of its liabilities with its notes shall be as sufficient and valid a payment as if the same had been made in specie or Dominion notes: Provided in either case the total amount of the notes of the bank in circulation at that time, including in

case of tender the amount tendered, does not exceed the amount of notes of the bank issuable under the provisions of *The Bank Act* and of clause (c) of said subsection.

(4) Subsection 16 of section 61 of *The Bank Act* shall apply to the excess circulation issued under the authority of this section, and interest shall accordingly be payable thereon as if such excess circulation had been excess circulation issued under the authority of said section 61.

(5) No proclamation issued under the provisions of this section shall continue in force for more than thirty days after the beginning of the first session of Parliament held after the issue thereof, unless it is approved by resolution passed by both Houses of Parliament.

(6) Any proclamation made under the provisions of this section may be varied, extended or revoked by any subsequent proclamation, and separate proclamations may be made dealing with separate subjects; but if any proclamation is varied, extended or revoked neither the previous operation thereof nor anything duly done thereunder shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation.

5. The Governor in Council may make regulations, not inconsistent with this Act with regard to advances to the chartered banks, and to the said savings banks, the terms and conditions affecting the deposit of securities, and all other matters necessary to give effect to the provisions of this Act.

6. The part of section 135 of *The Bank Act* immediately preceding clause (a) is repealed and the following is substituted therefor:—

"135. If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this Act and by *The Finance Act, 1914*, the bank shall,—„

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5 GEORGE V., CHAP. 4.

AN ACT RESPECTING DOMINION NOTES.

[*Assented to 22nd August, 1914.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as *The Dominion Notes Act, 1914*.

Interpretation.

2. In this Act, unless the context otherwise requires,—

(a) "Dominion notes" means notes of the Dominion of Canada issued and outstanding under the authority of this Act;

(d) "gold" means,—

(i) gold coins which are a legal tender in Canada and,

(ii) gold bullion in bars, each bar bearing either the stamp of the Royal Mint of the United Kingdom or of the branch thereof in Canada or of one of the branches thereof in Australia or of one of the coinage mints of the United States or of the Assay Office of the United States at New York certifying its weight and fineness, at a valuation of one dollar in the currency of Canada for every 23.22 grains of fine gold content;

(c) "Minister" means the Minister of Finance.

Issue and Redemption.

3. Dominion notes may be issued and outstanding at any time to any amount, and such notes shall be a legal tender in every part of Canada except at the offices at which they are redeemable.

4. Dominion notes shall be of such denominational values as the Governor in Council determines, and shall be in such form, and signed by such persons, two in number, as the Minister directs.

(2) By direction of the Minister, there may be substituted for signatures in the proper handwriting of one or both of the persons authorized to sign under the provisions of the last preceding subsection, facsimiles thereof printed from engraving: Provided that if both of the signatures are printed, then a distinguishing device and serial number shall be printed from engraving on each note, after the notes have been delivered by the printer and engraver to the Minister, and while the notes are in the custody and control of the officers of the Department of Finance.

(3) Dominion notes shall be redeemable in gold on presentation at branch offices established, or at banks with which arrangements are made for the redemption thereof as hereinafter provided.

Security.

5. The Minister of Finance shall always hold as security for the redemption of Dominion notes up to and including fifty million dollars, issued and outstanding at any one time, an amount equal to not less than twenty-five per centum of the amount of such notes in gold.

(2) As security for the redemption of Dominion notes issued in excess of fifty million dollars, the Minister shall hold an amount in gold equal to such excess.

6. In case the amount held in accordance with the provisions of this Act as security for the redemption of Dominion notes is not sufficient to pay the Dominion notes presented for redemption, or in case the amount so held is reduced below the amount required by this Act to be held, the Governor in Council may raise, by way of loan, temporary or otherwise, upon such form of security and upon such terms and conditions as the Governor in Council may approve, such sums of money as are necessary to pay such notes or to provide the amount required to be held as security for the redemption of Dominion notes issued and outstanding.

Proceeds and Expenses.

7. The proceeds of Dominion notes so issued shall form part of the Consolidated Revenue Fund of Canada, and all expenses incurred or required to be paid in connection with the engraving, printing or preparation of such notes, or the signing, issue or redemption thereof, shall be paid out of the said fund.

Monthly Statement.

8. The Minister of Finance shall publish monthly in *The Canada Gazette* a statement of the amount of Dominion notes outstanding on the last day of the preceding month, and of the gold then held by him for securing the redemption thereof.

Agencies for Redemption.

9. The Governor in Council may establish branch offices of the Department of Finance at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary, for the redemption of Dominion Notes, or may make arrangements with a chartered bank at any of the said places for the redemption thereof.

(2) The Governor in Council shall appoint a suitable person to be in charge of the respective offices so established, and such officer shall be called an assistant receiver general, and shall be an agent for the issue and redemption of Dominion notes.

Notes of Late Province of Canada.

10. Provincial notes under the Act of the late province of Canada, passed in the session held in the twenty-ninth and thirtieth years of Her late Majesty Queen Victoria's reign, chapter ten, intituled *An Act to provide for the issue of Provincial Notes*, shall be held to be notes of the Dominion of Canada,

and shall be redeemable in gold on presentation at Toronto, Montreal, Halifax or St. John, according as the same are respectively made payable, and shall be legal tender except at the offices at which they are respectively made payable.

11. Chapter 27 of the Revised Statutes, *An Act respecting Dominion Notes,* is repealed.

9-10 EDWARD VII., CHAP. 14.

AN ACT RESPECTING THE CURRENCY.

[*Assented to 4th May, 1910.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as *The Currency Act, 1910.*

Denominations and Standards.

2. The denominations of money in the currency of Canada shall be dollars, cents and mills,—the cent being one-hundredth part of a dollar, and the mill one-tenth part of a cent.

3. (1) The standard for gold coins of the currency of Canada shall be such that of one thousand parts by weight, nine hundred shall be of fine gold and one hundred of alloy.

(2) The standard for silver coins of such currency shall be such that of one thousand parts by weight, eight hundred shall be of fine silver and two hundred of alloy. 10-11 Geo. V., c. 9, s. 3. Am.

Coins.

4. Gold, silver and bronze coins, struck by the authority of the Crown for circulation in Canada, of the respective denominations mentioned in the schedule to this Act, and of the standard weight of fineness therein set out, shall be equal to and pass current for the respective sums in the currency of Canada following, to wit: for twenty dollars, ten dollars, five dollars, two and one-half dollars, one dollar, fifty cents, twenty-five cents, ten cents, five cents and one cent.

(2) In the making of such coins a remedy (or variation from the standard weight and fineness specified in the schedule hereto) shall be allowed of an amount not exceeding the amount specified in that schedule.

(3) If any coin of gold, silver, or bronze, but of any other denomination than that of the coins mentioned in the schedule

hereto, is hereafter coined under the provisions of this Act, such coin shall be of the same fineness as is fixed for coins of like material by that schedule, and shall be of a weight bearing the same proportion to the weight specified in that schedule as the denomination of such coin bears to the denominations or denomination of coin of like material mentioned in that schedule; and in the making of such coin a remedy shall be allowed of such amount as, having regard to the remedy assigned in that schedule to coins of like material, may be fixed and determined by proclamation under this Act; and such coin, if of gold, shall be subject to such provision as to least current weight as may be fixed and determined by proclamation under this Act, regard being had to the least current weight assigned in that schedule to the respective gold coins mentioned therein.

5. All coins of the currency of Canada which may be made pursuant to the provisions of this Act shall, subject to any regulations and conditions which may be made by the Master of His Majesty's Royal Mint in England, be coined at the Ottawa Branch of the Royal Mint; but if for any reason such coins cannot be made at the said branch mint as required, the Governor in Council may authorize the making of such coins at His Majesty's Royal Mint or at any other branch thereof.

6. The Minister of Finance may from time to time issue out of the Consolidated Revenue Fund such sums as may be necessary for the purchase of bullion in order to provide supplies of coin for the public service.

7. The sums received in payment for coin produced from bullion purchased under the next preceding section shall be paid into the Consolidated Revenue Fund.

Legal Tender.

8. A tender of payment of money, if made in coins which have been made in accordance with the provisions of this Act, and have not been called in under any proclamation made in pursuance of this Act, and have not become diminished in weight, by abrasion through ordinary and legitimate use, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the schedule hereto, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender,—

(a) in the case of gold coins, for a payment of any amount;

(b) in the case of silver coins, for a payment of an amount not exceeding ten dollars, but for no greater amount;

(c) in the case of bronze coins, for a payment of an amount not exceeding twenty-five cents, but for no greater amount.

(2) The holder of the notes of any person to the amount of more than ten dollars shall not be bound to receive more than

that amount in such silver coins in payment of such notes, if presented for payment at one time, although any of such notes is for a less sum.

(3) Nothing in this Act shall prevent any paper currency which under any Act or otherwise is a legal tender from being a legal tender.

9. The British sovereign of the weight and fineness prescribed by the laws of the United Kingdom at the date of the passing of this Act, and which is not of less weight than the current weight specified as the least current weight at which it is a legal tender in the United Kingdom, shall pass current and be a legal tender in Canada for four dollars and eighty-six cents and two-thirds of a cent of the currency of Canada; and any other gold coins made at His Majesty's Royal Mint or at any branch thereof, and current in the United Kingdom, being a multiple or division of the sovereign shall, subject to corresponding current weight specifications pass current and be a legal tender in Canada for proportionate sums in the currency of Canada.

10. The Governor in Council may, by proclamation, from time to time, fix the rates at which any foreign gold coins of the description, date, weight and fineness mentioned in such proclamation shall pass current and be a legal tender in Canada; Provided that until it is otherwise ordered by any such proclamation the gold coins of the United States of America hereinafter mentioned, that is to say the half eagle or five dollar piece, the eagle or ten dollar piece and the double eagle or twenty dollar piece, coined after the eighteenth day of January, one thousand eight hundred and thirty-seven, and while the standard of fineness for gold coins then fixed by the laws of the said United States remains unchanged, and weighing respectively one hundred and twenty-nine grains, two hundred and fifty-eight grains, and five hundred and sixteen grains, subject to the provisions of the laws of the said United States with respect to such coins as to tolerance or remedy and as to the reduction in weight by abrasion through ordinary and legitimate use below the said respective weights, in so far as such provisions prescribe the conditions under which the said coins shall be a legal tender in the said United States, and so long as such coins shall be receivable at their nominal value by the Treasury of the said United States and its offices, shall pass current and be a legal tender in Canada for five dollars, ten dollars and twenty dollars, respectively, in the currency of Canada.

11. The silver copper or bronze coins heretofore struck by authority of the Crown for circulation in the provinces of Ontario, Quebec and New Brunswick under the Acts at the time in force in the said provinces respectively, and such silver, copper or bronze coins as, before the passing of this Act, have been struck by the same authority for circulation in Canada under the Acts at the time in force in Canada, shall be current and a legal tender throughout Canada at the rates in the said

currency of Canada assigned to them respectively by the said Acts, and under the like conditions and provisions.

12. No other silver, copper or bronze coins than those which the Crown has heretofore caused to be struck or may hereafter cause to be struck for circulation in Canada, or in some province thereof, shall be a legal tender in Canada.

13. The stamp of the year on any foreign coin made current by this Act, or any proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year; and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being of the coinage of such country.

14. No coin which has been bent or mutilated, or has been defaced by the stamping or engraving thereon of any name, word, or mark, whether such coin is or is not thereby diminished or lightened, and no coin which has in any way been reduced in weight, except by abrasion through ordinary and legitimate use, shall pass current or be a legal tender.

Accounts, Debts and Obligations.

15. All public accounts throughout Canada shall be kept in the currency of Canada; and in any statement as to money or money value, in any indictment or legal proceeding, the same shall be stated in such currency.

(2) Every contract, sale, payment, bill, note, instrument, and security for money, and every transaction, dealing, matter and thing relating to money, or involving the liability to pay any money, which was made, executed or entered into, done or had on or subsequent to the first day of July, one thousand eight hundred and seventy-one, and before the coming into force of this Act, shall be deemed to have been and be, so far as anything remains to be or may be executed, done or had thereunder, as if the same was originally made, executed, done or had according to the coins made for circulation in Canada and which are legal tender in Canada .in pursuance of this Act, unless the same was made, executed, entered into, done or had according to the currency of Great Britain or of some British possession or of some foreign state.

(3) Every contract, sale, payment, bill, note, instrument and security for money, and every transaction, dealing matter and thing whatever relating to money, or involving the payment of or the liability to pay any money which is made, executed or entered into, done or had, shall be made, executed, entered into, done and had according to the coins made for circulation in Canada and which are current and legal tender in pursuance of this Act, unless the same be made, executed, entered into, done or had, according to the currency of Great Britain or of some British possession or some foreign state.

16. All sums mentioned in dollars and cents in *The British North American Act, 1867*, and in all Acts of the Parliament of

Canada shall, unless it is otherwise expressed, be understood to be sums in the currency of Canada.

17. All sums of money payable on and after the first day of July, one thousand eight hundred and seventy-one, to the Crown, or to any person, under any Act or law in force in Nova Scotia, passed before the said day, or under any bill, note, contract, agreement or other document or instrument, made before the said day in and with reference to that province, or made after the said day out of Nova Scotia and with reference thereto, and which were intended to be, and but for such alteration would have been payable in the currency of Nova Scotia, as fixed by law previous to the fourteenth day of April, one thousand eight hundred and seventy-one, shall hereafter be represented and payable, respectively, by equivalent sums in the currency of Canada, that is to say, for every seventy-five cents of Nova Scotia currency, by seventy-three cents of the currency of Canada, and so in proportion for any greater or less sum; and if in any such sum there is a fraction of a cent in the equivalent in the currency of Canada, the nearest whole cent shall be taken.

18. Any debt or obligation contracted before the first day of July, in the year one thousand eight hundred and eighty-one, in the currency then lawfully used in the Province of British Columbia, or in the Province of Prince Edward Island, shall, if payable thereafter, be payable by an equivalent sum in the currency of Canada.

Dominion and Bank Notes.

19. No Dominion note nor bank note payable in any other currency than the currency of Canada shall be issued or reissued by the Government of Canada, or by any bank (except as otherwise provided by *The Bank Act*), and all such notes issued before the first day of July one thousand eight hundred and seventy-one which are outstanding and legal obligations shall be redeemed, or notes payable in the currency of Canada shall be substituted or exchanged for them.

(2) The respective sums which Dominion notes and bank notes, now in circulation issued on or after the first day of July, one thousand eight hundred and seventy-one, and before the coming into force of this Act, purport to be obligations to pay, shall be deemed to be sums in the currency of Canada as by this Act established.

Powers of the Governor in Council.

20. The Governor in Council may from time to time by proclamation do all or any of the following things:—

(a) Determine the dimensions of and designs for any coin;

(b) In addition to the denominations of coins mentioned in the schedule hereto, determine the denominations of other coins to be coined and, subject to the provisions of this Act, the remedy and least current weight therefor:

(c) Diminish the amount of remedy allowed by the schedule hereto in the case of any coin;

(d) Determine the weight, not being less than the weight (if any) specified in the schedule hereto, below which a coin, when diminished in weight by abrasion through ordinary and legitimate use, is not to be deemed a current or legal tender;

(e) Make regulations under which the Minister of Finance may redeem silver, copper or bronze coins issued for circulation in Canada which by reason of abrasion through ordinary and legitimate use are no longer fit for circulation;

(f) Call in coins of any date or denomination;

(g) Revoke or alter any proclamation previously made.

(2) Every such proclamation shall be published in *The Canada Gazette* and shall thereupon come into operation on the date of such publication, and shall have effect as if it were enacted in this Act.

Examination and Test of Coins.

21. For the purpose of ascertaining that coins of the currency of Canada issued from the Ottawa Branch of the Royal Mint have been coined in accordance with the provisions of this Act, the Governor in Council shall nominate and appoint competent persons, not less than three, who shall meet at least once in each year, as assay commissioners, to examine and test, in the presence of the proper officers of the Ottawa Branch of the Royal Mint and of the officers attending pursuant to any regulations made hereunder, the fineness and weight of the coins reserved for this purpose.

(2) The Governor in Council may, from time to time, make regulations respecting the proceedings at and the conduct of such examination and test, and all matters incidental thereto, and in particular respecting the following matters, namely,—

(a) the time and place of examination and test;

(b) the setting apart out of the coins issued by the said branch mint of certain coins for examination and test; and the custody and production of the coins so set apart, and the production of the standard weights and trial plates hereinafter mentioned;

(c) the attendance of one or more officers of the Department of Finance and of one or more officers of the Department of Inland Revenue thereat;

(d) the recording and publication of the findings of the commissioners as the result of such examination and test, and the proceedings (if any) to be taken in consequence thereof.

(3) Every such regulation shall come into operation on the date therein in that behalf mentioned, and shall have effect as

if it were enacted in this Act, but may be revoked or altered by any subsequent regulation under this section.

22. The Dominion standard troy ounce, made of platinum-iridium now in the custody of the Minister of Inland Revenue, shall be the standard for regulating the weight of such currency, and the Minister of Inland Revenue shall cause weights of each denomination of coin made under this Act to be made and duly verified, and these weights, when approved by the Governor in Council, shall be the standard weights for determining the justness of the weight of and for weighing such coin.

(2) The Minister of Inland Revenue shall, for the purpose of such examination and test, procure such standard weights, multiples and divisions in weight of such standard troy ounce, and such balances as may be necessary for the purpose of such examination and test.

(3) The Minister of Inland Revenue shall from time to time, when necessary, cause trial plates of pure gold and of pure silver to be made and duly verified, and such trial plates shall be used for determining the justness of the gold and silver coins examined and tested under the provisions hereof.

(4) Such standard weights and trial plates shall, except as may be provided by any regulations made hereunder, be in the custody of the Minister of Inland Revenue, to be kept in such place and in such manner as the Minister of Inland Revenue may direct.

Expenses Incidental to Administration.

23. The costs, charges and expenses incident to the carrying out of the provisions of this Act, including the examination and test, procuring standard weights, trial plates and balances, shall be payable out of the Consolidated Revenue Fund.

When Counterfeit or Diminished Coin to be Broken.

24. Every officer employed in the collection of the revenue in Canada shall cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of the revenue of Canada.

Repeal.

25. *The Currency Act*, chapter 25 of the Revised Statutes, 1906, is repealed.

SCHEDULE.

Denomination of coin.	Standard weight.	Least Current weight.	Standard fineness.	Remedy allowance.	
				Weight per piece.	Millesimal fineness.
	Grains.	Grains.		Grains.	
Gold—					
Twenty dollar	516	513.42	Nine-tenths fine gold, one-tenth alloy; or millesimal fineness, 900	.50	1
Ten dollar	258	256.71		.40	1
Five dollar	129	128.355		.25	1
Two and one-half dollar	64.5	64.178		.20	1
Silver—					
One dollar	360	....	Eight-tenths fine silver, two-tenths alloy; or millesimal fineness, 800	1.50	4
Ffty cent	180	....		1.50	4
Twenty-five cent	90	....		1.00	4
Ten cent	36	....		*3.00	4
Five cent	18	....		†3.50	4
Bronze—					
Cent	50	....	Mixed metal, copper, tin and zinc	‡140.00	....

* This remedy is on a group of one dollar's worth, ten pieces.

† This remedy is on a group of one dollar's worth, twenty pieces.

‡ This remedy is on a group of eighty pieces weighed against a weight of one pound avoirdupois.

(As amended by 9-10 Geo. V., c. 16, s. 1, and 10-11 Geo. V., c. 9, ss. 1 and 2.)

9-10 GEORGE V., CHAP. 16.

AN ACT TO AMEND THE CURRENCY ACT, 1910.

[*Assented to 6th June, 1919.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. (1) The Schedule to *The Currency Act, 1910*, chapter fourteen of the statutes of 1910, is amended by striking out the last section thereof, relating to the bronze cent, and the footnote pertaining thereto, and substituting the following therefor:—

Denomination of coin.	Standard weight.	Least Current weight.	Standard fineness.	Remedy allowance.	
				Weight per piece.	Millesimal fineness.
Bronze Cent......	50	....	Mixed metal, copper, tin and zinc.	‡140	

‡ This remedy is on a group of one hundred and forty pieces weighed against a weight of one pound avoirdupois.

(2) The bronze coins heretofore struck by authority of the Crown shall continue to be current and legal tender.

2. This Act shall come into force upon such date as may be prescribed by proclamation issued by the Governor in Council.

10-11 GEORGE V., CHAP. 9.

AN ACT TO AMEND THE CURRENCY ACT, 1910.

[*Assented to 11th May, 1920.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section three of *The Currency Act, 1910*, chapter fourteen of the statutes of 1910, is repealed, and the following is substituted therefor:—

"3. (1) The standard for gold coins of the currency of Canada shall be such that of one thousand parts by weight nine hundred shall be of fine gold and one hundred of alloy.

"(2) The standard for silver coins of such currency shall be such that of one thousand parts by weight eight hundred shall be of fine silver and two hundred of alloy."

2. The Schedule to the said Act is amended by striking out the part thereof pertaining to silver coins and substituting the following therefor:—

Denomination of coin.	Standard weignt.	Least current weight.	Standard fineness.	Remedy allowance.	
				Weight per piece.	Millesimal fineness.
	Grains.	Grains.		Grains.	
"(b) Silver—					
One dollar......	360	....	Eight-tenths fine silver, two-tenths alloy; or millesimal fineness, 800.	1.50	4
Fifty cent.......	180	....		1 50	4
Twenty-five cent	90	....		1.00	4
Ten cent........	36	....		*3.00	4
Five cent.......	18	....		†3.50	4

* This remedy is on a group of one dollar's worth—ten pieces.

† This remedy is on a group of one dollar's worth—twenty pieces.

3. The silver coins of a millesimal fineness of nine hundred and twenty-five heretofore struck by authority of the Crown shall continue to be current and a legal tender, and the silver coins of a millesimal fineness of eight hundred struck since the first day of January, one thousand nine hundred and twenty, under the authority of the order of the Governor in Council dated the twenty-fifth day of November, one thousand nine hundred and nineteen, (P.C. No. 2373) and the order of the Governor in Council dated the twenty-ninth day of January, one thousand nine hundred and twenty, (P.C. No. 198) shall be current and a legal tender.

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18,489. Signature by mark 9,269

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